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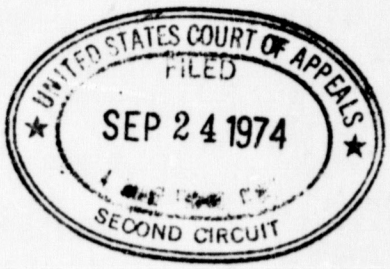
for the Second Circuit

APPENDIX

74-1611

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT



REA EXPRESS, INC.

Petitioner,

v.

CIVIL AERONAUTICS BOARD

Respondent.

Docket No.

74-1611

B/P/S

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Motion of BOR for late application and consolidation (12/11/70)

Motion of BOR for consolidation of Docket 22875 (12/11/70)

Motion of Greyhound for leave to file a late-filed document (12/15/70)

Motion of Greyhound to consolidate Docket 22893

Notice of prehearing conference 1/21/71 (12/17/70)

Motion of UPS for late filing and consolidation (12/28/70)

Motion of REA to strike late-filed documents of UPS (1/7/71)

Petition of REA for reconsideration of order 70-12-126 (1/7/71)

Motion of Imperial Air Freight for late filing and consolidation (1/6/71)

Motions (1/13/71) for leave to file late and consolidation filed by:

Docket 23009 J. E. Bernard & Co.

Docket 23010 Puerto Rican Forwarding Co.

Docket 23011 Wings and Wheels Express

Motion of REA to strike late-filed motion of Imperial (1/13/71)

Answer of UPS to Motion of REA (1/14/71)

REA Motion to strike Bernard (1/15/71)

REA Motion to strike Puerto Rican (1/15/70)

REA Motion to strike Wings and Wheels (1/15/71)

Order 1-1-88 granting Dept. of Def. and National Industrial Traffic League leave to intervene (1/19/71)

Motion of Trans-Air Freight for late filing (1/20/71)

Petition to intervene by NSSTC (1/21/70)

Motion of Jet Air Freight to file late and consolidation (1/22/71)

Motion of Jet Air to consolidate Docket 23033 (1/22/71)

Order 71-1-115 denying REA's petition for reconsideration (1/26/71)

Order 71-2-26 (2/4/71)

Order 71-2-30 dismissing Interjet (2/5/71)

Order 71-2-30 (2/16/71)

Report of prehearing conference held on Jan. 21 (2/22/71)

Letter from Bureau Counsel to Examiner with respect to certain surveys (2/26/71)

Exceptions to prehearing conference report filed (3/1/71) by:

Participating Airlines

AFFA

CF Air Freight

Emery Air Freight

NSSTC and Wings & Wheels

Petition of the Eastern Industrial Traffic League for leave to intervene (3/1/71)

Objections and further comments of REA (2/24/71)

Supplemental Report of Prehearing Conference (3/12/71)

Motion of NSSTC for leave to file an otherwise unauthorized document (3/17/71)

Reply of the above shippers to exceptions of participating airlines (3/17/71)

Order 71-3-139 dismissing petition of Eastern Industrial Traffic League (3/23/71)

Notice from the Bureau Counsel advising of conference on April 6, 1971 (3/30/71)

Notice in response to large volume of correspondence (3/30/71)

Petition of Eastern Industrial to review order (4/5/71)

Order 71-3-123 (4/19/71)

Notice with respect to responses to evidence to be produced (5/7/71)

Motion of Puerto Rican for permission to withdraw its application (5/21/71)

Answer of AFFA to Puerto Rican Forwarding Motion (5/25/71)

Notice of revised procedural schedule (5/24/71)

Order 71-6-29 dismissing above motion (6/4/71)

Notice extending date for Direct Exhibits to June 28, 1971 (6/14/71)

Notice extending procedural dates at request of REA (5/17/71)

Notice of hearing to be held on Oct. 12, 1971 (9/9/71)

Motion of Midland Forwarding for permission to file late (9/20/71)

Application of Midland Forwarding to participate as freight forwarder (9/20/71)

Order 71-10-69 denying Midland (10/15/71)

Transcript received (10/26/71) Vol. 1-hearing Oct. 12, 1971

Following transcripts received (10/26/71):

Volume 2 - hearing October 13, 1971

Volume 3 - hearing October 14, 1971

Volume 4 - hearing October 15, 1971

Volume 5 - hearing October 18, 1971

Volume 6 - October 19, 1971

Following transcripts received (10/21/71):

Volume 7 - hearing October 20, 1971

Volume 8 - hearing October 21, 1971

Volume 9 - hearing October 22, 1971

Transcript for hearing held Oct. 26, 1971 - Vol. 10 (10/27/71)

" " " Oct. 27, 1971 - Vol. 11 (10/28/71)

" " " Oct. 28, 1971 - Vol. 12 (10/29/71)

" " " Oct. 29, 1971 - Vol. 13 (11/1/71)

" " " Nov. 1, 1971 - Vol. 14 (11/2/71)

Motion of UPS to correct transcript of hearing (11/1/71)

Transcript for hearing Nov. 2, 1971 - Vol. 15 (11/3/71)

" " Nov. 3, 1971 - Vol. 16 (11/4/71)

" " Nov. 4, 1971 - Vol. 17 (11/5/71)

" " Nov. 5, 1971 - Vol. 18 (11/8/71)

" " Nov. 8, 1971 - Vol. 19 (11/9/71)

" " Nov. 9, 1971 - Vol. 20 (11/10/71)

Motion of National Industrial Traffic League to correct transcript (11/17/71)

Motion of NSSTC to correct transcript (11/22/71)

Statement of position of BOR (11/23/71)

Motion of AFFA to correct transcript (11/29/71)

Motion of Participating Airlines to correct transcript (11/29/71)

Motion of REA to include excerpts from Express Service Investigation (12/3/71)

Notice extending date for filing Brief (12/29/71)

Briefs filed to Examiner Keith on 1/21/71 by:

AFFA

BOR

J. E. Bernard & Co.

Emery Air Freight & NSSTC

National Industrial Traffic League

Participating Airlines

Southern Pacific Air Freight

Wells Fargo Air Express & REA

Letter in lieu of Brief submitted by BOR (1/21/72)

Letter in lieu of Brief submitted by UPS (1/21/72)

Motion of AFFA to stay Initial Decision (5/15/72)

Forwarders' Association to stay Initial Decision and defer procedural steps (5/19/71)

Initial Decision by Examiner Keith served (5/25/72)

Order 72-6-27 staying Initial Decision of Examiner Keith until further order of the Board (6/6/72)

Petition of Allied Am. Bird Co. for discretionary review of Initial Decision (6/9/72)

Exceptions of Initial Decision filed by:

- BOR-Air Freight Co. (6/14/72)
- Emery Air Freight (6/14/72)
- Air Freight Forwarders Association (6/16/72)
- So. Pacific Air Freight, Inc. (6/16/72)
- REA (6/16/72)
- Bureau of Operating Rights (6/16/72)
- Imperial Air Freight (6/19/72)

Letter from NSSTC advising that petitions for discretionary review will not be filed (6/21/72)

Notice of Oral Argument on August 16, 1972 (7/5/72)

Notice that Participating Airlines are granted permission to adopt in lieu of a Brief its Brief to Examiner (7/11/72)

Letters adopting Briefs to Examiner as Briefs to Board filed by:

AFFA (7/14/72)

Emery Air Freight (7/14/72)

National Industrial Traffic League (7/17/72)

Participating Airlines (7/17/72)

Briefs to Board submitted by:

Bureau of Operating Rights (7/17/72)

Allied Am. Bird (7/12/72)

REA (7/17/72)

So. Pacific Air Freight (7/17/72)

Notice granting Bureau of Operating Rights permission to file a brief to Board in excess (7/18/72)

Notice - appearances and time allotments (8/9/71)

Transcript for oral argument held August 16, 1972
Vol. 1 rec'd (8/17/72)

Motions to correct transcript of oral argument filed by:

A. So. Pacific Air Freight (8/29/72)

B. Emery Air Freight (8/29/72)

Motion of National Industrial Traffic League to correct transcript of oral argument (8/31/72)

Motion of Bureau of Operating Rights to correct transcript of oral argument (10/3/72)

Opinion and Order 73-12-36 (12/7/73)
Notice of Due date for filing of petitions for reconsideration (12/7/73)

Petition of REA for reconsideration of Order 73-12-36 (1/2/74)

Motion of REA to reject airlines' petition; alternatively, consolidate (1/2/74)

Answer of Emery Air Freight to petition of REA for reconsideration (1/11/74)

Answer of Emery Air Freight to motion of REA (1/11/74)

Answer to petition of REA by AFFA (1/14/74)

" " by Participating Airlines (1/14/74)

Motion of Participating Airlines to file answer; Answer to REA motion to file otherwise unauthorized document (12/9/74)

Motion of REA to file an otherwise unauthorized document (3/26/74)

Motion of Airlines for leave to file concurrence of certain airlines in motion of REA for extension (3/29/74)

Motion of AFFA for leave to file an otherwise unauthorized document (3/29/74)

Motion of NSSTC to file concurrence (4/5/74)

Motion of United Airlines for leave to file an otherwise unauthorized document (4/5/74)

Motion of REA for leave to file an otherwise unauthorized document (4/11/74)

Motion of BRAC (4/16/74)

Motion American Airlines, Inc. to file an otherwise unauthorized document (5/2/74)

Supp. Opinion and Order 74-5-25 (5/6/74)

Docket 26238

Petition of Airlines to Hold Discussions (12/18/73)

Letter Answer of AFFA (12/21/73)

Answer of Pet Industry Parties (12/28/73)

Answer of NATC (1/2/74)

Motion of REA for Rejection or Consolidation and Answer (1/2/74)

Reply of Airlines to REA Motion (1/8/74)

Answer of Emery to REA Motion (1/11/74)

Order 74-2-118 (2/27/74)

Petition of Airlines for Reconsideration (3/6/74)

Answer of AFFA to Petition for Reconsideration (3/12/74)

Answer of NATC to Petition for Reconsideration (3/18/74)

Answer of Pet Industry Parties to Petition for Reconsideration (3/18/74)

Answer of REA to Petition for Reconsideration (3/18/74)

Order 74-4-1 (4/1/74)

Notice and Agenda of April 18 Meeting (4/11/74)

REA Petition for Reconsideration (4/11/74)

Minutes of April 18 Meeting (4/30/74)

Notice and Agenda of May 16 Meeting (5/3/74)

Supplemental Agenda Item of May 16 Meeting (5/9/74)

Order 74-5-74 (5/14/74)

LETTER TO CIVIL AERONAUTICS BOARD
DATED OCTOBER 22, 1969

R E A EXPRESS

219 EAST 42nd STREET
NEW YORK, N. Y. 10017
/ 212 / 557-2254

Spencer D. Moseley
President

October 22, 1969

Hon. Secor D. Browne
Chairman, Civil Aeronautics Board
Washington, D. C.

Dear Mr. Chairman:

The Air Express Agreement between the Airlines and R E A Express expired June 30, 1969. By agreement it was extended for one month until July 31 and then again for three months until October 31, 1969, to permit negotiation of a definitive new agreement.

During this period, and prior thereto, negotiations have been underway. To date, conclusion of a mutually acceptable agreement has not been possible, and there is a serious risk that by October 31 the parties will remain at an impasse.

While we have kept the staff of the Board informed of the progress of the negotiations, the potential impact of a cessation of Air Express service, under which approximately 10 million shipments annually are handled, is of sufficient public importance that I want to bring the matter to the Board's attention.

The issues involved include the division of revenues and the denial to R E A of the right to adjust Air Express rates.

We will continue to negotiate in good faith with air carriers to reach agreement. We assure you that we are very hopeful that the suspension of a vital and necessary service can be avoided. However, the exigencies of R E A's situation are such that we have no alternative but to seek a new Air Express agreement which is more closely attuned to today's circumstances, rather than a continuation of a formula originally negotiated before the advent of the jet age.

We shall be available at all times to furnish the Board with such further information concerning the progress of negotiations as it may require.

Sincerely,

Spencer D. Mosley
President

cc: Air Express Negotiating Committee

Stuart Tipton
President, Air Transport Association

BEFORE THE
CIVIL AERONAUTICS BOARD

In the Matter of Air Express Service	:	Docket No. 22096

Petition and Complaint

REA Express (REA) files this Petition and Complaint pursuant to the Federal Aviation Act of 1958 requesting relief as hereinafter set forth in connection with the Air Express service rendered by it and certain air carriers.

I

REA and its predecessors have provided nationwide multi-modal express service for more than 100 years. REA is an express company regulated by the Interstate Commerce Commission under the Interstate Commerce Act and renders Air Express service under Agreement No. 17935 approved by the Civil Aeronautics Board in Order No. E-22271.

II

Respondents, the thirty-five air carriers listed in Exhibit A, and REA constitute the parties to the Air Express Agreement.

III

Air Express is a priority, expedited service provided

jointly by REA and the respondent air carriers. REA Express pioneered Air Express. The first Air Express service was inaugurated by REA in September 1927, seventeen years before publication of the first air freight tariff. In the past forty years public use of and dependence upon Air Express has grown hand-in-hand with the development of modern air transportation. Air Express has played a prominent role in that development. In 1969 Air Express transported approximately 10 million shipments with total revenues of around $100 million. Air Express is a vital element of the nation's transportation system synergistically knitting together the diverse routes of thirty-five air carriers and the intermodal capabilities of REA into a single coordinated transportation network providing door-to-door pickup and delivery, security, reliability, and economy at jet age speed to a broad spectrum of shippers. Many Air Express shipments consist of medicines, blood, laboratory animals, vital government traffic and items of high value or extreme perishability for which priority air movement is the only practical mode of transport. Others are simply items which businesses or individuals must move efficiently and quickly. The shipping public has come to rely on nationwide Air Express service.

IV

REA is uniquely suited to provide Air Express service. For more than one hundred years REA has transported virtually any commodity, door-to-door on an expedited basis to almost every conceivable point in the country. REA's nationwide network

of offices and terminals and its thousands of pickup and delivery trucks enable it to provide Air Express service to many outlying points which might otherwise not have ready access to air transportation. See Ex Parte No. 242, Express Company Terminal Areas, 332 I.C.C. 91 (1967), aff'd, Northern Freight Lines, Inc. v. United States, 304 F. Supp. 536 (N.D. Ga. 1969), aff'd per curiam, ____U.S. _____(March 16, 1970). REA is experienced in and equipped to handle unusual and priority types of shipments such as perishables, live animals, and high value items. In sum, the unique service offered under Air Express is a reflection of REA's experience, structure, equipment and commitment to expeditious inter-modal transportation.

V

With respect to Air Express, REA performs the pickup and delivery services, the shipping documentation, tracing, administration, billing, collection of receivables, record keeping, sales, advertising and promotion and handles claims and transfers. The air carriers provide the air transportation, exercise a veto power over tariff publication and collectively specify the terms of their relationship with REA.

VI

The present Air Express Agreement was entered into on August 1, 1964 for a period of five years. Under an extension

dated October 24, 1969 the present Air Express Agreement will expire on April 30, 1970. The extension provided for the commencement of negotiations on January 19, 1970, for the purpose of arriving at the terms of a new agreement not later than April 1, 1970. Negotiations have taken place but the parties have been unable to conclude an agreement. Both parties to the negotiations have expressed the desire for the continuation of Air Express as an important public service but have been unable to agree because of differences regarding major principles of the arrangement.

VII

The present period of negotiation follows earlier similar periods. The original expiration date of the Air Express Agreement was June 30, 1969. Following discussions, the Agreement was first extended until July 31, and then again for three months until October 31, 1969. Shortly before the October 31, 1969 extension would have expired, REA found it necessary to write to the Chairman of the Civil Aeronautics Board (letter of October 22, 1969), expressing the fear that it would not be possible to conclude a mutually acceptable agreement. That letter states:

> "... the exigencies of REA's situation are such that we have no alternative but to seek a new Air Express agreement which is more closely attuned to today's circumstances,

rather than a continuation of a formula originally negotiated before the advent of the jet age." 1/

In the same letter REA told the Board that the issues involved in the dispute "include the division of revenues and the denial to REA of the right to adjust Air Express rates." Thereafter, the present extension was signed.

The Airline Negotiating Committee has offered to continue negotiations and REA is willing to do so, but the gulf between the parties which has persisted on the same issues during more than six months of negotiation indicates that these basic issues cannot be satisfactorily resolved without intervention by the Board. With the termination date of April 30, 1970, REA feels compelled to take the action represented by this filing and bring these issues to the Board's attention as promptly as possible.

VIII

The airlines insist that they will accept no reduction in the amount of money which they receive based on the present traffic. This is unfair and discriminates against REA. Under the Air Express Agreement the airlines received 36¢ per ton mile from Air Express, which is approximately twice the ton-mile yield from air freight and substantially

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1/ The basic form of today's Air Express Agreement was negotiated in 1959 although it was further amended in 1964.

more than the ton-mile yield for air mail. 1/ Such disparity is not justified by costs or other factors. REA has offered to arbitrate this issue or to submit it jointly with the airlines to the Board for determination, but the airlines have rejected such a solution.

IX

REA has also sought the freedom under the Air Express Agreement to develop and file its own tariffs without airline veto. This is in accordance with the Board's consistent recommendations. In the Air Freight Forwarder case, the Board recommended that the tariff rates charged the public be "determined and filed by REA", and criticized "the anomalous situation which permits the air carriers to set tariff rates for REA and at the same time compete with REA for air cargo traffic" (9 C.A.B. at 486). See also Order E-5898 (1951). The inherent conflict of interest has never been more apparent than in the present negotiations when, for competitive reasons, the airlines seek to perpetrate their longstanding practices of denying REA and Air Express shippers the advantage of reasonable weight breaks and effective participation in the long-haul market.

1/ Under the October 24, 1969, extension of the Air Express Agreement (which expires April 30, 1970) the division of revenues was temporarily adjusted to permit REA to retain an additional $3,000,000. During that six month period the ton-mile yield to the airlines will approximate 30¢, but the airlines insist on a return to the 36¢ per ton-mile level based on present traffic.

X

REA's objective is to promote Air Express aggressively. REA's new management group has severed the historic ties between REA and the railroads and considers Air Express as an increasingly important and expanding service which will promote air commerce and benefit the shipping public, the airlines and REA. REA's management is prepared to devote considerable energy and investment to realize the full potential of Air Express. Such promotional activities by REA, which handles 25,000,000 surface shipments annually, can make a valuable contribution to air transportation at a time when air cargo capacity far outstrips utilization. To accomplish these objectives provisions are required in the Air Express Agreement which will permit Air Express to respond more flexibly to (a) technological developments such as unitization and standardization, (b) the introduction of wide-bodied jets, (c) inter-modal possibilities, and (d) the changing needs of the shipping public. Consistent with this flexibility REA seeks to be able to exercise a desirable degree of marketing initiative and innovation. To these ends, REA has requested the inclusion in the new agreement of a clause which would permit multi-levels of Air Express service as contemplated in paragraph 1 of the Board-approved 1954 Air Express Agreement (e.g., expedited air express, deferred air express, and

related services). Despite the precedent and rationale for this provision the Airline Negotiating Committee has flatly refused to consider it or to give any reasons for their position. At the very time when the airlines are proposing rate reductions of as much as 33% as incentives to speed the growth of air freight, they seek to deny marketing flexibility to REA and are adamant that they will not accept one cent less for Air Express.

XI

In addition, REA seeks a permanent agreement. As the Board is aware, REA's authority to conduct Air Express service has been founded on the existence and continuation of an Air Express Agreement. The history of negotiations between the air carriers and REA clearly manifests that this situation has consistently worked to REA's disadvantage in its attempts to structure an equitable arrangement with the air carriers. In dealing with REA the air carriers do not negotiate on an individual basis. Rather, the entire airline industry negotiates in concert and unites behind a single position. These factors make the bargaining power of the airlines immense and REA's small. The lopsided terms of the present Air Express Agreement -- and the similar terms the airlines would again force upon REA -- are a graphic illustration of

the airlines' overwhelming advantage at the negotiating table. In past negotiations, at the eleventh hour the airlines have been in a position to offer REA the Hobson's choice of taking the deal the air carriers hold out or terminating the service.

There is no disagreement among the parties that Air Express, a valuable public service for over forty years, should continue. But the fact that REA's authority to continue the service is tied to the agreement should not be used, as it has been, as a lever to compel REA to accept whatever economic dish the airlines serve up. Accordingly, REA has sought a permanent agreement with a broad arbitration provision to permit resolution of economic issues which cannot be resolved by periodic negotiation. This properly separates the economic issues of the arrangement, which are subject to variation over time, from the question of the continuation of the Air Express service, about which REA submits there is no issue.

XII

To summarize its position, REA believes that the future of Air Express as a vital public service requires the establishment of these major principles in a new Air Express agreement:

1. The amount which REA pays the airlines should be

fairly related to what other airline customers pay for air transportation.

2. REA should have the independent right, subject to Board approval, to develop and revise tariffs for Air Express service free from the power of veto which the air carriers now have. The Air Express Agreement and the tariff developed thereunder should not, as has been the case in the past, preclude Air Express customers from using the service for the long-haul air market and for a broader range of shipments.

3. The agreement should be permanent and provide for arbitration in the event that negotiations are unable to resolve disputes.

XIII

REA respectfully requests that the Board find that the foregoing actions and practices by the air carriers (1) are unjust and unreasonable in violation of section 404(a) of the Federal Aviation Act (the "Act") (49 U.S.C. §1374 (a)), (2) subject REA to unjust discrimination and undue disadvantages in violation of section 404(b) of the Act (49 U.S.C. §1374(b)), and (3) constitute unfair practices and unfair methods of competition in air transportation in violation of section 411 of the Act (49 U.S.C. §1381).

XIV

Pursuant to section 1002(a) of the Act (49 U.S.C. §1482(a)) REA respectfully requests the Board to institute an investigation into the matters alleged herein and to determine and prescribe the lawful rates and charges to be used in Air Express and the practices to be followed by the airlines and REA, as authorized in section 1002(d) of the Act (49 U.S.C. §1482(d)).

In addition REA requests that the Board determine, order and rule:

1. That, until further order of the Board, the present parties to the Air Express Agreement, as extended to April 30, 1970, continue to perform the Air Express service as contemplated thereunder;

2. That for the purpose of conducting the Air Express service as contemplated in the preceeding paragraph, REA be granted appropriate exemption from the requirements of the Federal Aviation Act;

3. That, pending the Board's final determination as to the proper amounts to be paid by REA to the air carriers, REA shall pay an amount which will yield the air carriers 26¢ per ton mile, such payments to be subject to retroactive adjustment under the Board's final determination;

4. That the future Air Express Agreement shall be permanent and provide that:

a. REA may file Air Express tariffs in accordance with the Board's procedures but without being required to obtain the concurrence of the air carriers; and

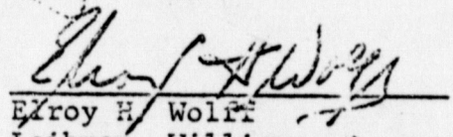
b. The terms of the Agreement are subject to re-negotiation at reasonable intervals subject to appropriate arbitration to permit resolution by third parties of issues the parties are unable to resolve by negotiation.

5. Such other relief as may be appropriate.

Respectfully submitted,



John E. Robson



Elroy H. Wolff
Leibman, Williams, Bennett,
Baird and Minow
1156 - 15th Street, N.W.
Washington, D.C. 20005

Attorneys for REA Express

Of counsel:
Arthur M. Wisehart
219 East 42nd Street
New York, New York 10017

VERIFICATION

CITY OF WASHINGTON)
DISTRICT OF COLUMBIA) SS:

John E. Robson, being duly sworn, deposes and says. That he is attorney for Railway Express Agency, Incorporated, complainant in this proceeding; that he has read the foregoing Petition and Complaint and knows the contents thereof; and that he believes that the same are true as stated to the best of his knowledge.

John E. Robson

Subscribed and sworn to before me by the affiant above named this 9th day of April, 1970.

Notary Public, D. C.

My commission expires

My Commission Expires Feb. 14, 1975

CERTIFICATE OF SERVICE

I hereby certify that I have this day served by mail a copy of the foregoing Petition and Complaint upon each of the air carrier parties to the Air Express Agreement and upon the Director of the Bureau of Enforcement of the Civil Aeronautics Board.

Dated at Washington, this 9th day of April, 1970.

Elroy H Wolf

EXHIBIT A

AIR CARRIER PARTIES TO THE AIR EXPRESS AGREEMENT

Air Canada
Air France
Air West, Inc.
Airlift International, Inc.
Alaska Airlines, Inc.
Alitalia Airlines, Inc.
Allegheny Airlines, Inc.
American Airlines, Inc.
Aspen Airways, Inc.

Braniff Airways, Inc.

Caribbean Atlantic Airlines, Inc.
Chicago Helicopter Airways, Inc.
Continental Air Lines, Inc.

Delta Air Lines, Inc.

Eastern Air Lines, Inc.

The Flying Tiger Line, Inc.
Frontier Airlines, Inc.

Los Angeles Airways, Inc.

Mohawk Airlines, Inc.

National Airlines, Inc.
New York Airways, Inc.
North Central Airlines, Inc.
Northeast Airlines, Inc.
Northwest Airlines, Inc.

Ozark Airlines, Inc.

Pan American World Airways, Inc.
Piedmont Airlines, Inc.

San Francisco & Oakland Helicopter Airlines, Inc.
Seaboard World Airlines
Southern Airways, Inc.

Trans Caribbean Airways, Inc.
Trans-Texas Airways, Inc.
Trans World Airlines, Inc.

United Air Lines, Inc.

Western Air Lines, Inc.

BEFORE THE

CIVIL AERONAUTICS BOARD

In the Matter of Air Express Service	:	Docket No._____

ANSWER ON BEHALF OF THE AIRLINE PARTIES TO AGREEMENTS C.A.B. NOS. 12866 AND 17935 TO PETITION AND COMPLAINT OF REA EXPRESS

This Answer, on behalf of the airline parties to Agreement C.A.B. No. 12866 (Agreement Among Certain Air Carriers Relating to Air Express Service) and Agreement C.A.B. No. 17935 (Air Express Agreement Between REA Express and Certain Air Carriers), to the Petition and Complaint of REA Express filed April 9, 1970, is submitted by the Air Express Negotiating Committee pursuant

to the authority vested in it by section VI of the aforesaid Agreement C.A.B. No. 12866.[1/] The airline parties to the aforesaid Agreements (hereinafter referred to as the "airlines") respectfully request that the said Petition and Complaint be dismissed by the Board, and in support of said request state as follows:

I. Preliminary Statement

For the reasons hereinafter set forth, the airlines are not undertaking to answer directly the numerous self-serving and argumentative allegations of REA Express set forth in paragraphs numbered III through XI of the Petition and Complaint. Attached hereto as Appendix A is a statement by the airlines of the relationships that have existed between the airlines and REA Express since the inception of air express service.

One highly significant aspect of that relationship, as set forth in Appendix A, is the fact that during the

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1/ Section VI of said Agreement reads as follows: "The said Committee is hereby authorized by each party hereto to negotiate for and on behalf of each party, with the Railway Express Agency, Inc., (or with such other organization or person as each party shall specifically authorize in writing) a contract or contracts, and any amendment, alteration, modification, or cancellation thereof, relating to the ground services for and administration of the Air Express service, ..."

entire history of air express service from a date preceding the enactment of the Civil Aeronautics Act of 1938 until August 1, 1959, REA Express was employed by the airlines to provide the ground and administrative services for air express and was paid all expenses plus a substantial profit as full compensation for the service so rendered. During that entire period, the airlines, and not REA Express, assumed the entrepreneurial risks of the air express service. Thus, air express service during that entire period was, in fact, the service of the airlines rendered pursuant to their certificates of public convenience and necessity, with REA Express simply an agent of the airlines.

Commencing with August 1, 1959, the airlines and REA Express changed their relationship to a partnership basis. Air express service then, for the first time, became a joint-enterprise of both the airlines and REA Express, with both partners sharing the revenue and the entrepreneurial risks. From August 1, 1959, to the present, air express service has been offered to the public under an agency tariff with all airlines and REA Express as participating carriers therein.

Air express service is not, and never has been, a service or property of REA Express, with the airlines

simply providing the airport to airport transportation for REA Express. Air express service has always been a form of air cargo transportation service offered to the public by the airlines. REA Express, for the first twenty-five or more years of that service, was an instrumentality of the airlines, and for the past ten years, a partner of the airlines.

II. Comments on Position of REA Express As Summarized in Paragraph XII

The position of REA Express is summarized into three points in Paragraph XII of the Petition and Complaint:

> Point (1): "The amount which REA pays the airlines should be fairly related to what other airline customers pay for air transportation."

The airlines' answer to this asserted position is simply that (1) REA Express does not pay the airlines anything, but rather, it shares the remaining air express revenues with the airlines after substantial sums are taken by REA Express out of the gross air express revenue; and (2) REA Express is not an airline customer, but rather, it is a participating carrier in the air express service.

> Point (2): "REA should have the independent right, subject to Board approval, to develop and revise tariffs for Air Express Service, free from the power of veto which the air carriers now have."

The airlines' answer to this asserted position is that the air express service is a service of the airlines pursuant to their certificates of public convenience and necessity, and, as such, the airlines must have a full voice in the setting of rates to the public, subject to the Board's authority over rates as set forth in the Federal Aviation Act. Thus, the position of REA Express would contravene the obligations of the airlines under the Federal Aviation Act.

> Point (3): "The agreement should be permanent and provide for arbitration in the event negotiations are unable to resolve disputes."

The airlines' answer to this asserted position is that the airlines are not about to enter into a permanent agreement of the type proposed by REA Express, with anyone, nor to surrender to arbitration management control of a service rendered under their certificates of convenience and necessity.

III. Comments on Board Findings Requested by REA Express in Paragraph XIII

REA Express, in Paragraph XIII of the Petition and Complaint has requested the Board to make three findings of violations of the Federal Aviation Act by the airlines as a result of their air express operations. Those

requested findings, and the airlines' responses thereto, are as follows:

> Requested Finding (1): that the airlines actions and practices with respect to air express service "are unjust and unreasonable in violation of section 404(a)."

REA Express has not specified in what respect it regards the airlines as being in violation of section 404(a). If REA Express is referring to the manner in which the airlines have conducted the air express service under Agreement C.A.B. No. 17935, there can be no question as to the fact that the airlines have been providing such service upon request, have been providing reasonable through service, and have been providing safe and adequate service, equipment, and facilities.

As to the air express rates, the last general increase in rates was initiated by tariff revisions filed May 15, 1969, for effectiveness June 18, 1969. By Order 69-6-78 dated June 13, 1969, the Board suspended said rates and ordered an investigation. In said order the Board specified the level of increased rates that would be deemed reasonable. Thereafter, on July 18, 1969, a new schedule of rates was filed, conforming to the Board's Order 69-6-78, which rates became effective August 22, 1969. The investigation order was subsequently dismissed by the Board. Thus, it is obvious

that the present level of air express rates, being in conformance with the Board's Order 69-6-78, are neither unjust nor unreasonable.

If REA Express is referring to anticipatory violations of section 404(a), in the event Agreement C.A.B. No. 17935 is not continued beyond May 1, 1970, there is no basis for such a finding. The airlines are willing to continue air express service under the present Agreement C.A.B. No. 17935 by extending the expiration date of that agreement, but REA Express has indicated that it is not willing to do so. If that Agreement expires, and no new agreement with REA Express exists, the shipping public will have available on an immediate basis several alternative means of shipping their traffic by air: air parcel post, airline air freight service, air freight forwarder service, and airline expedited package service. In addition, the airlines have the opportunity to establish another ground service agency to perform the functions heretofore performed for air express service by REA Express.

REA Express cannot possibly be referring to the joint-rate provisions of section 404(a) because it does not have joint-rates with the airlines, nor may it, as an indirect air carrier, have such joint rates with

the direct air carriers.

> Requested Finding (2): that the airlines "subject REA to unjust discrimination and undue disadvantage in violation of section 404(b)".

Since REA Express is not a shipper of air express and holds no authority from the Board as an air carrier, apart from the exemption which authorizes it to perform air express service in conjunction with the airlines under Agreement C.A.B. No. 17935, there is no way in which the airlines could possibly subject REA Express to unjust discrimination or undue disadvantage, as those terms are used in section 404(b) of the Act.

> Requested Finding (3): that the airlines' actions and practices "constitute unfair trade practices and unfair methods of competition in air transportation in violation of section 411 of the Act."

Section 411 refers to "unfair or deceptive practices or unfair methods of competition in air transportation." The airlines provide various types of property transportation service, including air express service, under their certificates of public convenience and necessity, and some of those services may be regarded as competitive with others. But such competition between types of services is not, and never has been construed to be unfair or deceptive practices or unfair methods of competition in air transportation. Within air express service itself, the airlines are not competing with REA Express.

Air express service is a joint-enterprise of the airlines and REA Express. Under the Air Express Tariff No. 1, C.A.B. No. 1, pursuant to which air express service is being rendered, the word "carrier" as used in that tariff is defined in Rule No. 1 (C) as follows:

> "'Carrier' includes the Express Company and each of the airlines."

IV. Comments on Specific Relief Requested by REA Express in Paragraph XIV

REA Express requests the Board to institute an investigation into air express practices and to determine and prescribe the lawful rates and charges for air express, under section 1002(d) of the Act.

REA Express has not alleged that any aspect of air express service, as provided for the public, is unlawful. With respect to air express rates, the Board has already prescribed them and has found them to be reasonable. In the absence of specific allegations pointing out the manner in which the present rates and/or practices in connection with air express service provided by the airlines is or are unjust or unreasonable with respect to shippers of air express, there is no basis for the institution of an investigation by the Board under section 1002(d).

In addition to the foregoing request for an investigation, REA Express has also requested that the Board "determine, rule, and order" as follows:

> (1) that the present parties to the Air Express Agreement, as extended to April 30, 1970, continue to perform the Air Express service as contemplated thereunder

By this request, REA Express, in effect, is asking the Board to order an indefinite extension of Agreement C.A.B. No. 17935. That Agreement expires under its own terms on April 30, 1970. The parties may voluntarily extend that Agreement beyond that date if they so desire, but, for the reasons set forth in Appendix B hereto, the Board lacks the power to compel the airlines and REA Express to enter into an extension of the Agreement.

The request may also be construed as asking the Board to order the airlines to continue air express service beyond April 30, 1970, in conjunction with REA Express without any agreement in fact existing, but in accordance with the provisions of Agreement C.A.B. No. 17935. If this is the purport of the request, REA Express is then asking the Board to do by indirection what it cannot do directly, for the reasons set forth in Appendix B. The Board cannot by such means confer upon itself powers which it does not have.

Air express service is a complex contractual relationship between thirty-five airlines and REA Express.

The rights, duties, and obligations of the various parties, under the Agreement pursuant to which air express is provided, are many and varied. In the absence of such an Agreement between the parties, defining their rights, duties and obligations, the air express service as it is known today simply cannot be performed. Thus, if REA Express is not asking the Board to order an extension of the present Agreement, then REA Express must be asking the Board to impose upon the airlines an implied Agreement. The fact that the Board lacks power to compel the airlines to enter into an actual agreement with REA Express likewise extends to the Board's power to impose upon the airlines an implied agreement with REA Express.

If the airlines were ordered to continue to provide air express service in conjunction with REA Express, but without an agreement, under the terms proposed by REA Express, the Board would be taking the air express business from the airlines and giving it to REA Express, thereby depriving the airlines of property rights without due process of law. (See Appendix B.) Also, by continuing the air express monopoly in the absence of an agreement approved by the Board under section 412(b) and

the exemption thus conferred by section 414, the airlines would be exposed to actions for civil damages and criminal prosecution under the anti-trust laws. (See Appendix B.)

Under section 1002(i) of the Act, the Board has the power to prescribe through routes and joint rates for air carriers entirely apart from any agreement between the carriers, but such joint rate provisions of the Act do not contemplate joint rates and through routes between direct and indirect air carriers. (See footnote 1, Appendix B.)

A further consideration is raised by the request of REA Express. The Board is being asked to compel the air lines to accept a specific arrangement, while the Board has no power to compel REA Express to accept, and to continue to render, their portions of the air express service, under terms and conditions unacceptable to REA Express. That company may abandon its activity in air express service without the Board having the power to impose any sanction upon REA Express.

(2) that for the purpose of conducting the Air Express service as contemplated in (1) above REA Express be granted appropriate exemption

If Agreement C.A B. No. 17935 is extended by voluntary action of the parties, REA Express will not require a further exemption. If a new agreement is entered into between REA Express and the airlines, a new exemption for REA Express normally would be required. In the absence of either an extended agreement or a new agreement, the request in (2) cannot be granted for the reasons stated in (1) above.

(3) that pending the Board's final determination as to the proper amounts to be paid by REA to the air carriers, REA shall pay an amount which will yield the air carriers 26¢ per ton mile, such payments to be subject to retroactive adjustment under the Board's final determination

If this request contemplates an extended agreement or a new agreement between the airlines and REA Express, then the division of revenue between the parties is a matter to be negotiated between them, rather than a matter to be imposed by the Board, as pointed out in Appendix B hereto. If, on the other hand, this request contemplates the setting of a rate to be paid the airlines in the absence of

any agreement, the request cannot be granted for the reasons set forth in (1) and (2) above.

(4) that the Board order the airlines to enter into a permanent agreement with REA Express which would give REA Express complete control over air express rates and would require the airlines to submit all other disputed matters to arbitration

For the reasons set forth in Appendix B hereto, the Board does not have the power to compel the airlines to enter into any type of agreement with REA Express.

V. Conclusion - Position of the Airlines

The airlines are fully aware of their responsibility to the shipping public. Their record of fostering air express service over the years speaks to this point. Now we are confronted with a situation where the means of providing such service may require a change in order to continue to meet public need. The airlines have demonstrated their desire to enter into a fair and equitable agreement with REA Express and to avoid termination of this long standing arrangement. However, in the opinion of the airlines, termination of that arrangement would be preferable in the public interest to an agreement which would constitute a

surrender to REA's take-over demands. In the event of such termination, adequate alternate means of moving small package traffic are available to the shipping public.

WHEREFORE, the Air Express Negotiating Committee, on behalf of the airlines, parties to Agreement C.A.B. No. 12866, and Agreement C.A.B. No. 17935, respectfully prays that, for the reasons set forth above, the Petition and Complaint of REA Express, filed with the Board on April 9, 1970, be dismissed.

Respectfully submitted,
AIR EXPRESS NEGOTIATING COMMITTEE

By _____
RUSSELL S. BERNHARD
Its Attorney

VERIFICATION

CITY OF WASHINGTON)
DISTRICT OF COLUMBIA)

Russell S. Bernhard, being duly sworn, deposes and states that he is the attorney for the Air Express Negotiating Committee, that he has read the foregoing Answer and Appendices thereto and knows the contents thereof, and that he believes the same are true as stated to the best of his knowledge.

Russell S. Bernhard

Subscribed and sworn to before me this 17th day of April, 1970.

Notary Public

CERTIFICATE OF SERVICE

I hereby certify that I have filed a copy of the foregoing Answer by properly addressed first class mail this 17th day of April, 1970, upon John E. Robson and Elroy H. Wolff, 1156 15th Street, N.W., Washington, D.C., 20005, and Arthur M. Wisehart, 219 East 42nd Street, New York, N.Y., 10017, attorneys for REA Express.

Russell S. Bernhard

APPENDIX A

AIR EXPRESS SERVICE - THE NATURE OF THE INTERESTS THEREIN OF THE AIRLINES AND THE EXPRESS COMPANY AND OF THEIR RELATIONSHIPS TO ONE ANOTHER

****

Air express service has existed for more than forty years. During that entire period of time the airlines (direct air carriers) have been performing pursuant to their certificates of public convenience and necessity the airport to airport transportation of air express shipments, and the Railway Express Agency, Inc., (under that name and previous and subsequent names) has been providing the pickup and delivery ground services and certain administrative services.

During the many years this service has existed, the Railway Express Agency, Inc., (hereinafter referred to as the Express Company) and the airlines have had written contracts defining the terms and conditions of their relationships in performing this jointly conducted operation. The evolution of these relationships can best be explained by an historical review of the air express operations during three distinct periods: (1) operations prior to the Civil Aeronautics Act of 1938, (2) operations from the

enactment of the Civil Aeronautics Act until August 1, 1959; and (3) operations from August 1, 1959, to the present date.

I. AIR EXPRESS OPERATIONS PRIOR TO ENACTMENT OF THE CIVIL AERONAUTICS ACT OF 1938

The relationship of the airlines and the Express Company in the period preceding enactment of the Civil Aeronautics Act on May 14, 1938, is described by the Civil Aeronautics Board in Railway Express Agency, Inc. - Certificate of Public Convenience and Necessity, 2 C.A.B. 531 (1941), as follows (p. 532):

> "Prior to and at all times since May 14, 1938, applicant has been engaged in the 'air express' business under contracts with substantially all of the domestic air carriers. The contract with each air carrier is terminable at the will of either party on six months' written notice, and is identical with every other contract except as to the routes involved. By the contract the air carrier agrees to furnish facilities for the transportation of property by aircraft between flying fields adjacent to enumerated points. The air carrier further agrees that during the term of the contract it will not accept property for transportation from any party other than applicant. Gross revenues after the deduction of promotional and operating expenses of the 'air express' business are divided 87 1/2 percent to air carrier and 12 1/2 percent to applicant. On its part, applicant

> agrees to engage as an independent contractor in the solicitation, promotion, collection, acceptance and delivery of parcels, packages, and other property for transportation by aircraft. Applicant further agrees not to enter into the air transportation business by operating its own aircraft in competition with the air carrier during the term of the agreement, and further agrees to perform the collection and delivery service for all property shipments to and from the airport regularly used by the air carrier and between connecting air carriers at different airports." (underlining added)

The significant aspects of these early air express arrangements were that (1) "air express" was the exclusive method of transporting property by air, in that the airlines agreed with the Express Company that they would not accept property for transportation from any other party; and (2) the Express Company would first receive from air express revenues all of its promotional and operating expenses, and then it would divide the remaining revenue on the basis of 87 1/2% to the airlines and 12 1/2% to the Express Company.

The participation of the Express Company in air express service on a "cost plus" basis was a mandatory requirement of the Express Company. REA was adamant in its refusal to accept any element of risk in conjunction with air express service. Thus, from its inception

until August 1, 1959, the entire entrepreneurial risk element in the air express operation was borne solely by the airlines

II. AIR EXPRESS OPERATIONS DURING THE PERIOD FROM THE ENACTMENT OF THE CIVIL AERONAUTICS ACT OF 1938 UNTIL AUGUST 1, 1959

A. The authority of the airlines to perform air express service under the Civil Aeronautics Act of 1938

In Mid-Continent Grandfather Certificate, 1 C.A.A. 8, Mid-Continent Airlines, Inc., applied for a grand-father certificate of public convenience and necessity, including a request that it be permitted to utilize the services of the Railway Express Agency, Inc., in connection with air express service. In denying this request, the Board stated as follows (1 C.A.A. 10-11):

> "The applicant has included in its application a request that under the certificate 'it be permitted to utilize the services of Railway Express Agency, Inc., a Delaware corporation, as an independent contractor, in discharging applicant's duties as a common carrier of property by aircraft other than the actual transportation thereof from airport to airport.' In view of the fact that the certificate to be issued under section 401 (e) (1) of the act will authorize the transportation of property by air, no additional

authorization is required in respect of the actual air transportation of such property, although, of course, there are other provisions of the act, not pertinent to this proceeding, to which contracts or other arrangements affecting air transportation may be subject."

See also Continental Air Lines, Inc., Grandfather Certificate, 1 C.A.A. 14; Chicago & Southern Air Lines, Inc., Grandfather Certificate, 1 C.A.A. 29; Western Air Lines Grandfather Certificate, 1 C.A.A. 39.

B. The legal status of the Express Company and the Air Express Contracts under the Civil Aeronautics Act of 1938

The enactment of the Civil Aeronautics Act of 1938 did not materially change the nature of air express service. It continued to operate substantially in the same manner and with the same type of relationships between the airlines and the Express Company as existed prior to enactment of the Act.

Soon after the new Act became effective, the Express Company filed an application for a "grandfather" certificate of public convenience and necessity to operate an "air express" business over the existing lines of the certificated airlines. Railway Express Agency, Inc. - Certificate, supra. The Board denied the application,

holding that section 401(e) of the Act did not apply to the type of operations being conducted by the Express Company during the "grandfather" period, but it held that the Express Company was an indirect air carrier. A temporary exemption was granted to the Express Company to permit it to continue its participation in air express operations pending an investigation of its contracts with the airlines. (C.A.B. Order Serial No. 941, March 13, 1941).

By order dated October 31, 1939, as amended, the Board instituted an investigation of the contracts between the airlines and the Express Company. Because of the war, the investigation was postponed, and the Board's decision in the investigation was not finally issued until March 2, 1943 (Railway Express Agreements, 4 C.A.B. 157). In the course of the investigation the Board advised the airlines that air transportation had reached a state of development where the airlines must be freed from the restrictive conditions of the air express contract. Of particular concern to the Board were the conditions that provided: (1) that the airlines would not accept cargo business from anyone except the Express Company, (2) that the Express Company would not

contract with any other airlines for a competitive service without meeting certain restrictive conditions, and (3) that air express rates had to be maintained at a certain level above rail express rates.

Upon being advised that the Board would not approve the contracts unless the foregoing conditions were removed, the airlines and the Express Company amended the agreements effective February 24, 1943, to conform to the Board's requirements, and the Board, on March 2, 1943, then approved the contracts under section 412 of the Act (4 C.A.B. 160).

No further action was taken upon the exemption order pursuant to which the Express Company was operating as an indirect air carrier until September 3, 1946, at which time, in Order Serial No. 5149, the Board continued the exemption.

The enactment of the Federal Aviation Act of 1958 had no effect upon the air express operations. All pertinent provisions of the Civil Aeronautics Act of 1938 were brought forward in the new Act. Accordingly, the Board again acted on November 20, 1958, to extend the exemption. Such reissued orders were deemed necessary because the exemption applied only to operations con-

ducted pursuant to the specifically approved contracts between the airlines and the Express Company, and as those contracts were amended or superseded, revised exemption orders were required. The latest such revision of the exemption was on June 4, 1964, in Order No. E-22273.

C. The nature of the contractual relationships between the airlines and the Express Company, 1938-1959

During the twenty year period from the enactment of the Civil Aeronautics Act of 1938 until August 1, 1959, the contracts between the airlines and the Express Company remained substantially unchanged. The contracts were renewed each five year period, but the Express Company still insisted upon retaining a cost-plus status. The nature of the contractual provisions for division of revenue between the airlines and the Express Company were as follows:

(1) Contract effective February 24, 1943

Under this contract, the Express Company received all expenses of every type attributable to the air express service, plus 12 1/2% of the gross revenue remaining after the foregoing cost items were deducted.

The contract also provided as follows:

"The payment provided for herein shall be in full compensation to the Express Company for all services which may be rendered by the Express Company as contemplated by this Agreement, and the Express Company agrees to accept, so far as lawful, such payment as full compensation for such services."

(2) Contract effective January 1, 1951

Under this contract, the Express Company received (1) a "fixed cost factor" for each shipment, based upon actual 1950 costs plus 10% plus annual adjustments; (2) all other direct costs not included in determining fixed cost factor; (3) overhead equal to 12 1/2% of the costs in (1) and (2); (4) a profit equal to 10% of the costs in (1), (2), and (3); and 20% of the remaining gross revenue after the foregoing deductions of costs and profit.

The contract also provided as follows:

"The payment provided for herein shall be in full compensation to the Express Company for all services which may be rendered by the Express Company as contemplated by this Agreement, and the Express Company agrees to accept, so far as lawful, such payment as full compensation for such services."

(3) Contract effective August 1, 1954

Under this contract, the Express Company

received (1) a fixed cost factor per shipment based upon 1953 costs, plus annual increments; (2) all other direct costs not included in determining the fixed cost factor; (3) overhead equal to 9 1/2% of the costs in (1) and (2); (4) 3% of gross revenue; and (5) 19.31% of gross revenue remaining after deducting the foregoing items.

The contract also provided as follows:

> "The payment provided for herein shall be in full compensation to the Express Company for all services which may be rendered by the Express Company as contemplated by this Agreement, and the Express Company agrees to accept, so far as lawful, such payment as full compensation for such services."

The foregoing contract provisions clearly demonstrate the cost-plus nature of the remuneration received by the Express Company from air express operations during the period 1938-1959. Although the contracts afforded the airlines the right to require appropriate accounting by the Express Company, and also the right to audit the air express accounts maintained by the Express Company, the fact that the air express and rail express operations were thoroughly intermingled made impossible an accurate or realistic audit of air express costs incurred by the

Express Company. In this connection, the airlines employed a certified public accounting firm which, after study, concluded that it was not possible to make an adequate audit. As a result, the airlines simply had to accept, virtually on faith, the amount of air express revenue determined for them by the Express Company.

While the entire entrepreneurial risk of the air express operation was borne by the airlines, as evidenced by the cost-plus compensation basis for the Express Company, the actual holding out to the public of air express service was under a tariff issued in the name of, and published by, the Express Company, with the consent of the airlines. Thus, to the public the air express business appeared to be the business of the Express Company; but actually, the business belonged to the airlines, and the Express Company was employed by the airlines to perform certain specific services in connection with air express service. This fact is made abundantly clear by the quoted contract provisions set forth above with regard to the "payment ... in full compensation to the Express Company for ... services ... rendered...". The Express Company, during the twenty-one years from 1938 to 1959, was actually working for the

airlines, was paid its full costs plus profit for the services rendered, and bore no entrepreneurial risk. The steadily increasing share of the total gross revenue paid to the Express Company under these contracts is evidenced in the following section.

D. Airline revenue as a percentage of gross air express revenue during the period 1940-1958.

Calendar Year	Gross Air Express Revenue	Airline Revenue	Airline % of total
1940	$ 3,043,000	$ 2,061,333	67.72
1941	$ 4,277,000	$ 2,894,634	67.66
1942	$ 9,036,000	$ 6,777,925	75.00
1943	$10,999,000	$ 8,014,257	72.86
1944	$11,451,000	$ 8,020,134	70.04
1945	$13,497,000	$ 9,927,234	73.54
1946	$14,718,000	$ 9,452,000	64.22
1947	$17,553,000	$10,589,000	60.32
1948	$18,504,000	$10,458,000	56.51
1949	$17,272,000	$ 9,281,000	53.73
1950	$22,901,000	$13,042,000	56.94
1951	$30,676,000	$15,663,000	51.05
1952	$32,365,000	$16,844,666	52.04
1953	$34,239,000	$17,526,000	51.18
1954	$33,248,000	$16,687,000	50.18
1955	$40,316,000	$20,340,000	50.45
1956	$42,106,000	$19,539,000	46.40
1957	$38,006,651	$16,129,000	42.43
1958	$40,990,000	$17,457,000	42.58

III. AIR EXPRESS OPERATIONS FROM AUGUST 1, 1959, TO THE PRESENT DATE

A. The development of the "partnership" concept in lieu of the cost-plus arrangement with the Express Company

The 1954 contract was set to expire on July 31, 1959. In anticipation of the imminent negotations with the Express Company for a new contract, the airlines met early in 1959 to consider their position. The conclusion was reached that the airlines would not again be subjected to a cost-plus arrangement for the Express Company, particularly in view of the apparent inability of the Express Company to control its spiralling costs. Additionally, the airlines felt that the time had come to make the public aware of the fact that air express service was a service of the airlines, rather than a service of the Express Company, and to do this they conluded that there must be a new type of tariff in which all the airlines would be participating carriers. Lastly, the airlines agreed that henceforth the Express Company would have to share the entrepreneurial risk.

The airlines realized that to attain these objectives they could no longer contract individually with the

Express Company. Hence, in early 1959 an "Agreement Among Certain Air Carriers Relating To Air Express Service" was developed. The Agreement removed from the "standard-form express contract" those elements which were of concern solely to the airlines, such as the establishment of the Air Express Committee and its functions and the division of the air express revenue among the airlines. The Agreement was a continuing one and an airline party could withdraw only upon six months notice to the other airlines. Thus, the new Agreement was, in effect, an air express pooling agreement between the airlines. The Agreement further provided for the establishment of an Air Express Negotiating Committee to be elected by the airlines, and whose duty it was to negotiate with the Express Company (or some other party) to provide the required ground and administrative services in connection with air express operations. The Agreement was filed with the Civil Aeronautics Board as Agreement C.A.B. No. 12866. The Board advised the airlines that it would approve the Agreement only after certain amendments were made. The airlines amended the Agreement accordingly, and the Agreement was approved by the Board on April 21, 1959

(Order No. E-13764). The Agreement continues in effect to this day, and all U.S. certificated airlines operating between points in the United States and three foreign airlines operating between a point in Canada and a point in the United States are parties thereto.

The negotiations between the Air Express Negotiating Committee and the Express Company during May, June and July, 1959, were long and difficult. The airlines were adamant on two points: the arrangement had to be a partnership with a 50-50 split of revenues, after certain agreed expenses to be taken by the Express Company, and an agency tariff must be published in which the airlines were to be participating carriers. On July 1, 1959, the airlines, believing that the outlook for a contract with the Express Company was virtually hopeless, filed their own Official Air Express Tariff No. 1 and undertook through Air Cargo, Inc., to make arrangements to provide their own ground and administrative services for air express.

Subsequently, the Express Company agreed to the partnership arrangement and the new agency tariff. The separate airline tariff and Air Cargo, Inc. arrangements were cancelled, and air express service continued under a new arrangement between the airlines and the Express Company. A new agency tariff was published with each of

the airlines and the Express Company as participating carriers.

B. The terms of the contract effective August 1, 1959

Under the terms of the August 1, 1959 agreement (which was filed with the Board as Agreement C.A.B. No. 13498 and approved by the Board on November 24, 1959, by Order No. E-14675), the distribution of gross air express revenues was as follows:

(1) Advertising expenses and the expenses of the Joint Committee were paid first.

(2) The Express Company then retained $1,738,000.

(3) The Express Company was then entitled to the amount derived from any rate increase after August 1, 1959, attributable solely to increased Express Company costs.

(4) The remaining gross air express revenues were divided equally - one half to the Express Company and one half fo the airlines.

C. The terms of the contract effective August 1, 1964

The 1959 Agreement between the airlines and the Express Company expired July 31, 1964. A new five-year Agreement was entered into on August 1, 1964, and filed with the Board as Agreement C.A.B. No. 17935. That

Agreement was approved by the Board on June 4, 1965, by Order No. E-22271.

Under the 1964 Agreement revisions favorable to the Express Company were made. Essentially, the division of revenue between the Express Company and the airlines is as follows:

(1) Advertising and Joint Committee expenses are first deducted.

(2) The Express Company is then given the proceeds of all rate increases attributable to its increased costs.

(3) The gross revenue remaining is divided into two equal shares - one for the Express Company and one for the airlines.

(4) From the airlines' share, $722,000 is deducted and paid to the Express Company.

(5) From the airlines' share, an amount equal to 1.7% of total gross air express revenue (after deducting items (1) and (2) above) is deducted and paid to the Express Company. (For the first ten months of 1969, this figure amounted to $1,265,423).

(6) From the airlines' share, 30% of the amount paid by the Express Company in loss and damage claims is deducted and paid to the Express Company.

The respective shares of gross air express revenue accruing to the airlines and the Express Company under the "partnership" concept which began August 1, 1959, including the airlines' declining percentage is readily apparent from the following figures:

D. Airline revenue as a percentage of gross air express revenue during the period 1959-1969

Calendar Year	Gross Air Express Revenue	Airline Revenue	Airline % of total
1959	$47,701,000	$20,803,000	43.52
1960	$49,574,000	$23,862,000	47.93
1961	$50,817,000	$23,765,000	46.76
1962	$58,401,000	$26,968,000	46.17
1963	$61,295,000	$28,421,000	46.36
1964	$67,400.000	$31,114,000	40.16
1965	$79,163,000	$34,118,000	43.09
1966	$87,514,000	$36,800.000	42.05
1967	$87,847,000	$35,471,000	40.37
1968	$93,603,000	$38,222,000	40.83
1969 *	$99,224,074	$40,360,577	40.68

* 12 months ending October 31, 1969.

E. Contractual status subsequent to June 30, 1969

The 1964 Agreement, C.A.B. No. 17935, had a termination date of June 30, 1969. For some months prior to that time the Express Company, then being operated by trustees appointed to hold and dispose of the railroad owned stock of the company, was in an uncertain state as to its future. A group of company officers had proposed to the trustees that they would purchase the company and other offers may also have been pending. Because of these uncertainties, the Express Company requested an extension of the existing Agreement until October 31, 1969. The

airlines agreed, and an amendment was executed to that effect on June 12, 1969.

On or about July 10, 1969, the trustees announced that the offer of the Express Company management group to purchase the Company had been accepted. (The changed nature and ownership of the Express Company will be discussed in section IV following). The new management group advised the airlines that they were not then prepared to negotiate a new contract, and that they would require a period of time to familiarize themselves with the essential details concerning the air express operations. However, negotiations began in the latter half of August 1, 1969, and several sessions were held prior to the end of October.

Early in October, 1969, the Express Company management stated that the Express Company was in desperate financial condition, and that if it were to remain solvent it would require some interim arrangement for additional revenues during the period November, 1969, through June, 1970. The airlines agreed to make available $3,000,000 to the Express Company, in the form of monthly payments to be taken from the airlines' share of revenues during the period November, 1969, through April, 1970, provided that the present agreement was extended to May 1, 1970, and that negotiations would commence not later than January 19, 1970,

for the purpose of arriving at the terms of a new Air Express Agreement on or before April 1, 1970. That date has come and gone, but no new Air Express Agreement has been reached.

IV. THE CHANGED NATURE OF THE EXPRESS COMPANY AND ITS OWNERSHIP

A. The changed nature of Express Company operations

Originally the Express Company was conceived and operated as an adjunct of the railroad industry - their package service. It picked up, arranged for rail transportation, and delivered small shipments. The service was performed at points throughout the Nation receiving rail service.

Because of the Express Company's nationwide rail express pickup and delivery operations and administrative services, the Express Company was employed by the airlines to perform a similar service for air shipments, using the same vehicles and offices that handled rail shipments. Initially, the Express Company confined itself almost entirely to these two types of express service - rail and air, between which there was no competition.

With the decline of rail passenger service, and the express cars associated with such service, the Express

Company has moved into the field of substituted highway transportation. The Interstate Commerce Commission has granted motor carrier certificates to the Express Company for both line-haul motor service involving a prior or subsequent rail or air movement and for exclusive highway service. See Railway Express Agency, Inc., Extension Nashua, N.H., 91 M.C.C. 311 (1962), and Railway Express Agency, Inc., Extension - Rochester - Albany, 98 M.C.C. 341 (1965).

In conjunction with its highway operations, the Express Company has instituted "key-point terminals", where it consolidates and breaks-bulk in connection with movements between such terminals. The Interstate Commerce Commission has authorized the Express Company under its motor carrier certificates to serve very much larger terminal areas than the traditional commercial zones which other motor carriers may serve. Express Company Terminal Areas, 332 I.C.C. 91 (1967). This fact, plus the very liberal privileges the Interstate Commerce Commission has accorded the Express Company with respect to the publication of aggregate rates, unit rates, and volume rates, with the latter ranging to 10,000 pounds minimum shipments, the Express Company has become a major competitor in the line-haul motor carrier field.

The Express Company has recently entered other areas of line-haul surface transportation. It performs consolidation and distribution services for shippers, and in its break-bulk operations it will deliver the smaller shipments to the post office for onward movement. It also has moved into rail piggy-back service in connection with containerized services offered between its terminals. It also operated an extensive leasing service, which it recently sold.

In international surface transportation, the Express Company offers a single bill-of-lading service by ship transportation between the United States and foreign points. In international air transportation, it is an I.A.T.A. agent.

Thus, in the field of cargo transportation, both domestic and international, the Express Company appears to be expanding on many fronts. The effect this will or could have on the future development of the small package air traffic, which has traditionally been the role of air express service, cannot be foreseen at this time; but the effect could be adverse as a result of possible conflicting interests present in the Express Company operations as they now exist.

B. The changed nature of Express Company ownership

From its inception until 1969 the Express Company was

a wholly owned subsidiary of the railroads. Commencing in about 1964, certain of the railroads made overtures towards disposing of their interest in the Express Company. A lack of unanimity among the railroads as to whether they wanted to sell or retain the Express Company contributed to the uncertainty as to the future of that Company. With the Company in desperate financial straits, the railroads placed their stock in the hands of voting trustees with authority to sell the Company. Various offers were made, but failed to materialize. Finally, in the summer of 1969, an Express Company management group made an offer to the voting trustees, which offer was accepted.

According to public statements, a management group, consisting of five Express Company officers, with an investment of approximately $2,000,000, purchased control of the Express Company. On August 20, 1969, the REA Holding Company was organized as a Delaware corporation owned by the Express Company officers who made the purchase offer. Acquisition of the Express Company stock presumably has been effected through purchase by the holding company, which now controls the Express Company. The indications are that there will be a public offering of the Express Company stock.

V. THE FUTURE OF AIR EXPRESS SERVICE IF THE AIRLINES AND THE EXPRESS COMPANY DO NOT RENEW THEIR CONTRACT

The record reveals that the average air express shipment today weighs 27 pounds and is transported by air an average distance of 750 miles at an average cost to the shipper of approximately $10.00. Moreover, on the basis of a survey conducted in January, 1970, by the airlines at the 35 cities where the Express Company maintains airport offices, it has been found that substantial numbers of air express service users do not utilize the Express Company's pickup and/or delivery services. In response to specific airline questions, Express Company supervisory personnel in the field estimated that a substantial number of shipments were being brought to and/or picked up from the Express Company at the airports. The estimates at some of the major airports were: Newark 60%; Chicago-O'Hare 60%; Atlanta 60%; Los Angeles 56%; Charlotte 45%; Miami 40%; Cleveland 35%; and Philadelphia 35%. The above average air express shipment weights, distances and costs, and the estimates of shipments not picked up or delivered by the Express Company indicate that the use of alternative means of handling shipments now moving as air express would not be adverse to the interests of the shipping public.

If the airlines and the Express Company do not reach an agreement, then various alternatives are available to the airlines. The airlines still will have their basic underlying agreement C.A.B. No. 12866, under which they may make other arrangements to provide the necessary ground services and administration for air express service. Or the airlines may undertake their own joint air express operations with their own facilities. Or, air express may become a separate category of cargo service offered by each airline.

Meanwhile, a range of alternative air services are available to the present user of air express service. They are:

1. Air Parcel Post Service

Air parcel post service receives the same priority as air mail; the shipment must be taken to the post office; the shipment is delivered to the consignee by the post office at destination; a 70 pound weight limitation and a 100 inch maximum girth limitation applies.

2. Air Freight Forwarder Service

In air freight forwarder service, pickup and delivery service is provided and weight and size limitations will accommodate all air express shipments.

3. Airline Air Freight Service

In airline air freight service pickup and delivery service is available and weight and size limitation will accommodate all air express shipments.

4. Airline Airport-to-Airport Package Service

A new expedited package service is now being offered by several airlines, limited to on-line, airport-to-airport movement. The package is carried on a flight specifically designated by the shipper. Rates vary from airline to airline, but the service is designed to handle shipments requiring expedition (under circumstances where the shipper desires to bring the shipment to the origin airport and the consignee desires to receive the shipment at the destination airport).

The cost to the shipper of the above alternative services compared to the cost of air express service will vary according to the service chosen, the weight and distance of the shipment, and whether pickup and delivery service is desired. The speed and quality of these services is comparable to that of air express service.

APPENDIX B

LEGAL MEMORANDUM

Question Presented: Does the Civil Aeronautics Board have the authority (a) to require the airlines to continue their arrangements with REA Express for air express service under Agreement C.A.B. No. 17935, which expires under its own terms on April 30, 1970; or (b) to modify the terms of Agreement C.A.B. No. 17935, including the expiration date thereof; or (c) to require the airlines to enter into a new agreement with REA Express for air express service under the terms imposed in whole or in part by the Board; or (d) to require the airlines to continue to provide an express service in conjunction with REA Express without an agreement?

The Board's authority, if any, in the premises must be found within the scope of section 412 of the Federal Aviation Act.[1/] The present Agreement C.A.B. No. 17935 is subject to section 412(a) of the Act, and the parties to the said Agreement duly filed it with the Board as required by that section. By Order No. E-22271, dated June 4, 1965, the Board approved the said Agreement under the provisions of section 412(b) of the Act. Under the terms of the Agreement, it was to terminate automatically on June 30, 1969. By subsequent agreements of the parties, also filed with the Board under section 412(a), the termination date was extended to April 30,

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1/ Sections 404(a) and 1002(i) of the Act do not contemplate joint rates and through routes between direct and indirect air carriers. Airborne Freight Corporation v. Civil Aeronautics Board, 257 F. 2d 210

1970. The termination on April 30, 1970, is automatic. No cancellation or other notice is required as a condition precedent to termination.

ANALYSIS OF C.A.B. AND COURT CASES UNDER THE CIVIL AERONAUTICS ACT AND THE FEDERAL AVIATION ACT RELATING TO THE BOARD'S AUTHORITY UNDER SECTION 412

The Board, in a number of cases, has established the position that under section 412, it has full authority to state the conditions upon which it will approve an agreement, but that it does not have the authority to compel the parties to accept such conditions. In other words, the Board can offer the parties the choice of having their agreement approved upon their acceptance of the Board's conditions, or of having their agreement disapproved.

A leading case on this subject is Agreement Establishing Air Cargo, Inc., Petitions of Eastern Air Lines, Inc., and United Air Lines, Inc., for Reconsideration, 9 C.A.B. 468 (1948). In that case Eastern and United requested reconsideration of the condition imposed that any air carrier certificated by the Board be authorized to participate in Air Cargo, Inc., as a matter of

right. Eastern and United argued that this condition was unlawful because the condition "is an attempt to revise the agreement among the parties" and the Board has no legal authority to impose a condition. The Board rejected this argument (9 C.A.B. at 471-2), on the basis that the condition did not revise the agreement, "but merely insures that no air carrier party to the agreement shall execute the provisions thereof in a manner which would unreasonably exclude new certificated-air-carrier participation in accordance with" the Board's decision. The Board also held that the condition related merely to procedural considerations, not to substantive matters.

> "If the condition in fact is contrary to the provisions of the agreement, then it would appear that the agreement is adverse to the public interest under section 412(b) of the Act. Under such circumstances we have the alternative of either disapproving the agreement or imposing a condition to nullify objectionable provisions. The argument that we can use only the alternative of disapproval, whatever its academic legal merits, would appear to be an unrealistic approach to the problems of administrative regulation under section 412. It would impose unwarranted burdens on parties to an agreement and defeat the accomplishment of many worthwhile objectives. It would appear to be a much sounder regulatory approach to give the parties to an agreement the opportunity of performance under the agreement in accordance with standards

> of public interest determined by us where that is practical, rather than to disapprove the whole agreement outright. Since we can always disapprove an agreement if a condition imposed upon an order of approval under section 412 is violated, the legal result will be the same whether we impose a condition in the first instance or disapprove an agreement until it is amended to remove provisions that are adverse to the public interest. ..." (p. 472)

In United-Western Acquisition of Air Carrier Property, 11 C.A.B. 701 (1950) (not involving Section 412 as such) the Board held it had power to impose employee protective conditions in cases of transfers of certificates under Section 401 of the Act. The Board stated:

> "The short answer to any challenge to the Board's power to impose conditions in a certificate-transfer case is that by imposing conditions the Board finds that without them the transfer is not consistent with the public interest and should be disapproved. Hence, the imposition of conditions does no more than give the parties to a certificate transfer an opportunity to modify the basis of their transaction, and thereby to avoid the order of disapproval which the Board would otherwise be compelled to issue. Air Cargo, Inc., Agreement, Petitions, 9 C.A.B. 468, (1948)."

In ATC Agency Resolution Investigation, 29 C.A.B. 258 (1959), aff'd, 286 F.2d 414 (2nd. Cir. 1961), cert. denied, 366 U.S.S. 928 (1961), the Board made its first

comprehensive investigation of the resolutions and procedures of the Air Traffic Conference of America for selection and retention of travel agents since the ATC agreement was originally approved. Bureau Counsel offered several proposed changes in the ATC procedure, including suggesting that the Agency Committee system be eliminated and its functions given over to the executive secretary.

American Airlines argued that the suggestions of Bureau Counsel amounted to a re-writing of the agreement. The Examiner found:

> "According to American, bureau counsel's proposal to disapprove the resolution and have the ATC adopt his ideas or else promulgate regulations and amend the carrier's certificates so as to prescribe compliance with the regulations, is a subterfuge for evading the limits of the Board's power under section 412. The Board, American argues, can only veto section 412 agreements, it cannot modify them; and neither the 1952 amendment giving the Board power to curb unfair competition by travel agents nor the Board's power to condition the grant of certificates to the airlines can alter the basic fact that the Board has no jurisdiction to regulate the selection and retention of travel agents by the airlines." (p. 309)

The Examiner held:

> "That the Board has no jurisdiction to regulate the selection and retention of travel

> agents there can be no dispute. ... The legislative history of section 412 clearly supports American that this authority reposes in the airlines subject only to test the public interest under the watchful eye of the Board." (p. 309)

The Examiner held, however, that the Board has recognized its power to "attach reasonable conditions to its approval nullifying objectionable provisions and prescribing the basis upon which the agreement will acceptably meet the test of public interest." The Examiner then quoted Air Cargo, supra, and held that "To the extent that Bureau Counsel's recommendations contemplate a nullification of objectionable features in the conference system and the establishment of a basis upon which such system will meet the test of public interest, they may properly be considered. Beyond this, however, they are improper and should be ignored." (p. 310)

The Examiner later expressed doubt that the agreement could be modified by substituting the executive secretary for the Agency Committee (p. 318):

> "As mentioned earlier, section 412 of the Act was enacted in order to give the carriers a measure of industry self-regulation subject only to the watchful eye of the Board. It is not industry self-government for the Board to

> tell the carriers exactly how they are to operate in the agency field by prescribing the terms under which they can proceed. The Board's function is to veto agreements or parts thereof which are adverse to the public interest and to indicate the basis upon which approval will be made. Bureau counsel has gone much further than this and to adopt his revision of the system is tantamount to subverting the intent of Congress under section 412."

On exceptions to the Examiner's decision, the Board agreed with the Examiner's recommended changes in the ATC resolution and agreed also with his denial of certain of Bureau Counsel's suggestions. With respect to the suggestion that the executive secretary be substituted for the Agency Power, the Board found this was unsound, but specifically stated that its decision on this point did not rest upon "any question of our power to so condition our order of approval" (pp. 267-8). In sustaining the Examiner's agreement with Bureau Counsel that the Agency Committee should be given de novo power of review instead of the more limited power of review which the resolution specified, the Board (footnote p. 266), stated:

> "In concluding that the Board possesses the authority to condition its approval upon the imposition of this requirement, we therefore do not adopt those sections of the examiner's

initial decision which question the extent of our power to prescribe, in lieu of disapproval, the basis on which the resolution is not adverse to the public interest. Cf., Pan American-National Agreements, 28 C.A.B. 960 (1958); Air Cargo, Inc., Agreement, Petitions, 9 C.A.B. 468 (1948). Similarly, we reject the exceptions of American and ASTA which challenge our power under sec. 412 to impose conditions upon our approval."

On appeal, the U.S. Court of Appeals for the Second Circuit sustained the Board's power to grant conditional approval of the agreement. The Court stated: "...the power to condition its approval on the incorporation of certain amendments is necessary for flexible administrative action and is inherent in the power to approve or disapprove. We would be sacrificing substance to form if we held invalid any conditional approval but affirmed an unqualified rejection accompanied by an opinion which explicitly stated that approval would be forthcoming if modifications were made." (McManus v. C.A.B., 286 F.2nd 414 (2nd Cir. 1961), at page 419).

The ATC decision was cited in Order E-20741 adopted April 24, 1964, 41 C.A.B. 798 (1964), affirmed, 121 U.S. App. D.C. 355, 350 F.2d 733 (1965). There, the Board considered the ATC "Standard Agent's Ticket and Area

Settlement Plan". Fugazy Travel Bureau, Inc., objected to the requirement in the Plan for three monthly remittances. The Board denied Fugazy's request for oral hearing, finding it would serve no useful purpose, and stating (footnote 7, page 801):

> "Fugazy's contention that the Board is passing on his 'property' rights without granting a hearing misconceives the nature of the Board's action in the ATC Agency Resolution Investigation, 29 C.A.B. 258 (1959), and in other related proceedings which approved joint carrier agreements effecting travel agents. The Board, under the authority of sec. 412, passed upon joint carrier agreements to insure compliance with the Act. The Board did not license travel agents or otherwise confer on them any authority or property rights."

The Board's decision was affirmed in Fugazy Travel Bureau, Inc. v. C.A.B., 121 U.S. App. D.C. 355, 350 F.2d 733 (1965), on the basis, among other things, that Fugazy lacked standing to protest. The Court stated (p. 739 of 350 F.2d):

> "The Board's orders herein challenged do not effect the petitioner's status as a travel agent - in fact, the Civil Aeronautics Board does not license travel agents, nor does it regulate the contractual arrangements between individual airlines and such agents as they choose to employ or utilize. ..."

In these cases, therefore, both the Board and the Courts have recognized that Section 412 preserves

the carriers' freedom to contract with whomever they voluntarily choose, subject to the Board's power to approve or disapprove, including its power to state the conditions upon which it will approve the parties' agreement if they choose to agree according to those conditions.

In related cases concerning its jurisdiction to regulate air carriers, the Board has held that it does not have authority to compel air carriers to merge. Intra-Alaska Case, 28 C.A.B. 57 (1958); States Alaska Case, 20 C.A.B. 791 (1955). The Board has also held that it is the basic policy of the Federal Aviation Act that carriers initiate rates in the first instance, subject to investigation and suspension by the Board. Minimum Rates Applicable to Air-freight, 34 C.A.B. 263, 265 (1961).

CASES UNDER RELATED REGULATORY ACTS

Further support for the position taken above is derived from decisions of other regulatory agencies under related statutes. Section 412 was modeled after Section 15 of the Shipping Act. (See McManus v. C.A.B., 286 F.2d at 419). Section 15 of the Shipping Act requires

that all agreements between carriers be filed with the Federal Maritime Commission, and that the Commission may by order "disapprove, cancel or modify any agreement or any modification or cancellation thereof, (if unlawful) ... and shall approve all other agreements, modifications or cancellations". The underlined words, "or modify", do not exist in section 412, but otherwise the two statutes are virtually identical with regard to this matter.

The words, "or modify" do create a real difference in the powers of the two agencies. The Federal Maritime Commission has held, like the Board, that it does not have the power to compel the carriers to enter into new agreements. See Agreement No. 9431, Hong Kong Tonnage Ceiling Agreement, 10 F.M.C. 134 (1966). In that case States Marine Lines had signed the agreement, but had withdrawn from the agreement before it had been approved by the Commission. In concluding that it did not have power to compel the participation of States Marine Line, the Commission stated:

> "We take no position on the question of whether States Marine Lines' withdrawal or repudiation of Agreement No. 9431 was justified or not. It is the fact of this withdrawal and not the reasons therefor which concerns us. As to this fact, there is no dispute among the parties.

"The Bureau asks us to approve Agreement No. 9431 as submitted notwithstanding States Marine's withdrawal. This we cannot do.

"The role of the Commission with respect to agreements requiring approval under section 15 is essentially a passive one. We neither encourage nor discourage such agreements. The function of the Commission is to examine such agreements in the light of the legal criteria imposed by the Shipping Act. If the agreement meets these criteria, the agreement is approved. If there is some question as to whether the agreement should be approved, the matter is set down for hearing.

"We have no general equity authority to compel specific performance on the part of a recalcitrant party. Put another way, the Commission's initial task under section 15 is to deal with agreements among or between carriers or other persons subject to the Act, not disagreements.

"The Bureau argues that it is not asking us to compel participation by States Marine but only to approve the agreement which States Marine had signed. To approve the agreement in question in the circumstances of this case would be to do by indirection that which we could not do directly. Approval of the agreement would be tantamount to compelling participation of States Marine Lines against its will.

"While it is true that Congress intended, by the Shipping Act, to allow carriers to enter into anticompetitive combinations (subject of course to approval and regulation by the Commission) it is equally true that Congress has zealously written safeguards into the law which are designed to protect the rights of a carrier to pursue an independent existence."

In a later case, Modification of Agreement 5700-4, 10 F.M.C. 261, the Federal Maritime Commission, for the first time recognized and exercised its power "to modify" an agreement, pursuant to the specific authority so granted in Section 15. The Commission carefully distinguished this case from the Hong Kong Agreement Case, supra, by pointing out that its action involved a "modification" to a then effective agreement between various carriers. Congress did not see fit to grant to the Civil Aeronautics Board the same power "to modify" agreements that it granted to the Federal Maritime Commission, despite the fact that the two statutes are otherwise virtually identical. This omission must be recognized as significant. If the power had been granted in section 412, then presumably the Board would have authority to change the expiration provisions of Agreement C.A.B. No. 17935. But the absence of such a provision in section 412 would appear to confirm the Board's lack of authority to take such action.

Further by way of analogy, the Interstate Commerce Act likewise lacks the power to compel carriers to merge, St. Joe Paper Co. v. Atlantic Coast Line R. Co., 347 U.S. 298 (1954); Chesapeake & Ohio Ry. Co. - Control -

Baltimore & Ohio R. Co., 317 I.C.C. 261, 290 (1962) or to compel a railroad to grant trackage rights, Baltimore & Ohio R. Co. Operation, 261 I.C.C. 535 (1945), at 544.

THE AIRLINES CANNOT LAWFULLY BE REQUIRED TO CONTINUE TO PROVIDE AIR EXPRESS SERVICE IN CONJUNCTION WITH REA EXPRESS WITHOUT AN AGREEMENT BETWEEN THE AIRLINES AND REA EXPRESS

The authority to provide air express service is a right and a privilege derived by the airlines from their certificates of public convenience and necessity. Mid-Continent Airlines, Inc., Grandfather Certificate, 1 C.A.A. 8, 10-11. If the Board were to order the airlines to continue to perform air express service in conjunction with REA Express under the conditions requested by REA Express, and without an agreement between the airlines and REA Express, the Board would be depriving the airlines of their right to perform air express service independently or with a ground service agent of their own choosing. The Board, by such action, would be taking the air express business from the airlines and giving it to REA Express. In so doing, the Board would be depriving the airlines of property without due process of law in violation of their

constitutional rights, since certificates of public convenience and necessity are property rights entitled to constitutional protection. United States v. Seatrain Lines, 329 U.S. 424, 91 L. Ed. 396; Movers Conference of America v. United States, 205 F. Supp. 82.

Such action by the Board would also raise serious questions under the anti-trust laws with respect to air express service, if the airlines were to continue operations in conjunction with REA Express in the absence of an agreement approved by the Board under section 412(b) of the Act. Air express service is an exclusive monopoly arrangement enjoyed by REA Express. No other indirect air carrier participates with the airlines in a service involving a priority in the handling of cargo traffic aboard aircraft and in an exclusive arrangement for the ground handling of cargo traffic. The fact that the continuation of the air express service would be the result of a Board order would not necessarily relieve the carriers of liability for civil damages and criminal prosecution under the anti-trust laws. United States v. Borden Company, 308 U.S. 188, 84 L. Ed. 181.

CONCLUSION

Since Agreement C.A.B. No. 17935 between the airlines and REA Express expires by its own terms (as amended) on April 30, 1970, without any cancellation thereof being required by any party thereto, the Board does not have authority to disapprove such termination. Moreover, the Board does not have power to compel the airlines to extend that agreement or to compel the airlines to enter into another agreement with REA Express.

MACLEAY, LYNCH, BERNHARD & GREGG

By _____
RUSSELL S. BERNHARD

LETTER TO CIVIL AERONAUTICS BOARD
DATED MAY 21, 1970

AIR EXPRESS COMMITTEE

May 21, 1970

Mr. A. M. Andrews
Director
Bureau of Operating Rights
Civil Aeronautics Board
Washington, D. C. 20428

Re: Air Express Negotiations

Dear Mr. Andrews:

This letter on behalf of the airlines Air Express Negotiating Committee is in response to your request at the conference on May 19, 1970, for a proposal from the Committee as to the nature of a formal proceeding which could be conducted by the Board during a one year extension of the Air Express Agreement to resolve the issue of "fairness" with respect to the economic issues involved in the pending air express negotiations.

We conceive the "fairness" issue as being concerned with the matter of the division of air express revenue between the two parties (REA Express and the airlines collectively) in proportion to their respective contributions to air express service. We further believe that the contributions of the parties are to be measured in terms of their fully allocated costs plus a fair return.

Based on these fundamental concepts, the airlines propose that an air express tariff rate structure be constructed consisting of two elements - the REA costs plus return and the airline costs plus return. Each of the two parties is to determine its own costs for the purpose of such tariff construction, and each must be prepared to defend such costs in an appropriate proceeding before the Board. A division of revenue formula will be developed simultaneously, which will return to each party such share of the revenue from each shipment which reflects its rate element.

We propose that such a tariff be prepared and filed with the Board as soon as possible; that the Board investigate, but not suspend, the said tariff; that the usual adversary rate proceeding be conducted with full right of cross-examination to the parties, for the purpose of determining the validity of the cost data relied upon by the parties for their particular rate-element; and that any deficiency in the cost data of either party, as finally determined by the Board, be reflected in a corresponding reduction in that party's rate-element and in the tariff rate level.

We believe the foregoing procedure to be a fair and equitable method of pricing air express service and of dividing the revenue between the parties. We further believe that a full adversary proceeding before a hearing examiner is the only feasible method of establishing the validity of the cost elements utilized by the parties in constructing the rate-structure. The final arbiter of the cost elements will thus be the Board and not the parties.

Respectfully yours,

A. M. de Voursney
Chairman for the Air Express
Negotiating Committee

cc: Mr. Tom Kole
President
REA Express

AMENDMENT TO AIR EXPRESS AGREEMENT

(AGREEMENT C. A. B. NO. 17935)

****

The Agreement entitled "Air Express Agreement between REA Express and Certain Air Carriers - Agreement C. A. B. No. 17935" dated July 31, 1964, as amended June 10, 1969, October 24, 1969, and April 24, 1970, is hereby further amended as follows:

I.

The termination date of "Midnight, June 30, 1970" in Article XIII, as amended, is hereby deleted, and the following inserted in lieu thereof: "Midnight, July 31, 1970".

II.

In the event that the proposed tariff, attached hereto as Appendix A, becomes effective, the following further amendments to the aforesaid Agreement shall become effective on the same date that the tariff becomes effective:

A. The termination date of "Midnight, July 31, 1970," shall be deleted and the following inserted in lieu thereof: "Midnight, June 30, 1971".

B. Article II Section B shall be deleted in its entirety and the following new Section B shall be inserted in lieu thereof:

B. UNAVAILABLE, INADEQUATE OR INTERRUPTED AIR TRANSPORTATION

1. In the event that all the air express offered for any particular flight cannot be carried on that flight, the Air Carrier agrees that it will promptly notify REA Express of such excess air express. If

the transportation of such excess air express can be expedited by another Air Carrier from the same point, such excess air express shall in accordance with instructions from REA Express be returned to REA Express for transfer to such other Air Carrier, or be transferred by the Air Carrier to such other Air Carrier. If such excess air express cannot be expedited by any other Air Carrier from the same point, but such excess air express can be expedited by forwarding via surface transportation to another near airport designated by REA Express where air service is available, all such excess air express applicable to a particular flight shall be forwarded in surface transportation as a single shipment in any surface service provided or arranged for by REA Express at the applicable surface tariff rate for such service, with the Air Carrier as origin shipper and with the consignee to be designated by REA Express. The Air Carrier shall pay the cost of forwarding such excess air express via surface transportation.

2. If for any reason an Air Carrier shall terminate a particular flight at a point intermediate between the points of origin and destination, the Air Carrier agrees that it will promptly notify REA Express of such termination and will, as expeditiously as possible, transfer the Air Express from the flight so terminated to another aircraft of its own or of another Air Carrier, if such air service is available at the place of such termination. If no air service is available at the place of such termination, the Air Carrier shall pay the cost of forwarding such air express via surface transportation to a point where

air service may be resumed, or to the destination airport, whichever REA Express shall determine to be the more expeditious. All such air express from the particular terminated flight, which is to be transported by surface means, shall be forwarded in any surface service provided or arranged for by REA Express at the applicable surface tariff rate for such service, as a single shipment with the Air Carrier as origin shipper and with the destination of the surface transportation and the consignee to be designated by REA Express.

3. Suspension, cancellation or elimination of air service by an Air Carrier will be subject to the following provisions:

(a) If air service at a point is deleted from an Air Carrier's certificate or is indefinitely suspended, and no other Air Carrier serves such point, the point shall be removed from the Air Express Tariff as promptly as possible, and until such removal is accomplished, air express shipments to or from such point shall be handled as excess air express as provided in subsection 1 or 2 above. The Air Carrier shall give as much advance written notice to REA Express as reasonably possible with respect to such impending suspension, cancellation, or elimination of air service.

(b) If air service at a point is temporarily suspended and is expected to be resumed by the

Air Carrier, and no other Air Carrier serves such point, the Air Carrier shall have the option of providing service to and from such suspended point in the same manner as excess air express under the provisions of subsections 1 or 2 above; or, in the alternative, to have such point temporarily suspended in the air express tariff. The Air Carrier shall give REA Express as much advance written notice as reasonably possible of the option elected.

(c) If air service shall be cancelled by the Air Carrier because of weather, strike, or other emergency, air express shipments at, to, or from such point or points affected shall be handled the same as excess air express under the provisions of subsections 1 or 2 above, unless and until the Air Carrier places an embargo at such point or points and REA Express at its general office in New York City receives a copy of the embargo notice.

C. Article VI. Section C. Subsections 2 and 3 shall be deleted in their entirety and the following new subsections 2 and 3 shall be inserted in lieu thereof:

2. In the event a tariff increase initiated by only one party under the provisions of Section C. 1 above becomes effective, the party initiating such increase shall receive the amount of such increase, and Appendix B hereto shall be adjusted accordingly.

3. In the event a tariff increase initiated jointly by both parties under the provisions

of Section C. 1 above becomes effective, each party shall receive the amount of its requested increase, and Appendix B hereto shall be adjusted accordingly; provided, however, that if the rate increase allowed for each party by the regulatory agency is less than the rate increase requested, the amount to be received by each party shall be the amount of increase recognized for such party by the regulatory agency, or in the absence of such separate recognition, the amount to be received by each party shall be that percentage of the amount it requested that the total rate increase allowed bears to the total rate increase requested, and Appendix B hereto shall be adjusted accordingly.

D. Article VII, Section A is deleted in its entirety and the following new Section A shall be inserted in lieu thereof:

A. Allocation and Payment

1. Each month Gross Air Express Revenue earned shall be allocated between REA Express and the Air Carriers in accordance with Appendix B, under mutually acceptable accounting procedures.

2. The joint expenses of the Joint Committee for Air Express, as provided for in Article V. C hereof, shall be paid by REA Express, and REA Express shall be reimbursed for one-half such expenses from the Air Carriers' division of the Gross Air Express Revenue.

3. REA Express shall be reimbursed from the Air Carriers' division of the Gross Air Express Revenue for that percentage of loss and damage claim payments paid out each month by REA Express on air express

shipments which the Air Carriers' division of Gross Air Express Revenue for that month bears to total Gross Air Express Revenue.

4. REA Express shall pay each month to the Air Carriers the amount allocated to them in subsection 1 above after the deduction of the retentions described in subsections 2 and 3 above.

5. REA Express shall retain each month the amount allocated to it pursuant to subsection 1 above.

E. Article VII. Section C is deleted in its entirety and the following Section C shall be inserted in lieu thereof:

C. Maintenance of books and records

1. REA Express shall maintain in its corporate books of account separate accounts for the accumulation of Gross Air Express Revenues and all adjustments thereto. These accounts shall be so maintained that the entire accounting for revenues under this contract can be found in the REA Express general ledger.

2. REA Express shall maintain detailed records of loss and damage claim payments paid out each month by REA Express on air express shipments.

III.

This Amendment shall take effect as of the 30th day of June, 1970, except as otherwise specified herein.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed as of the 24th day of June, 1970.

Attest:

~~SECRETARY~~
Chairman, Bd

REA EXPRESS, INC.

BY _____
TOM KOLE, PRESIDENT

For and on behalf of the Air Carriers parties to an Agreement entitled "Agreement Among Certain Air Carriers Relating to Air Express Service" (Agreement C. A. B. No. 12866).

BY _____
NORMAN J. PHILION,
ATTORNEY AND AGENT

LETTER TO CIVIL AERONAUTICS
BOARD DATED JUNE 30, 1970

Mr. A. M. Andrews
Director, Bureau of Operating Rights
Civil Aeronautics Board
1825 Connecticut Avenue
Washington, D. C. 20428

June 30, 1970

Dear Mr. Andrews:

Air Express Service

At the June 25 meeting of representatives of the CAB, the airlines and R E A Express, you expressed a desire to receive comment from R E A on the May 21, 1970 letter to the Board from the Air Express Negotiating Committee and some indication of R E A's thinking as to the future.

As you are aware, events have progressed considerably since the Board requested from R E A and the airlines suggestions as to the procedure for handling outstanding issues. A new tariff has been filed for Air Express and an amendment and extension of the Air Express Agreement, contingent upon the new tariff going into effect, has been executed by the parties. In addition, the parties have undertaken to attempt to resolve certain other issues concerning the Air Express service. R E A believes that the new tariff and

the new amendment to the Air Express Agreement represent improvements over the existing tariff and Agreement. While it is true that a number of the central issues in dispute are not yet resolved, the new tariff and amendment reflect a better cooperative spirit and some substantive progress.

The new tariff now under consideration by the Board represents a considerable investment of time, thought and negotiation by the parties. REA believes that the tariff is progressive, will broaden the availability of Air Express to the shipping public and is thoroughly justified, from the standpoint of public interest. Failure of the tariff to become effective will seriously threaten R E A's ability to continue service. R E A believes that the supporting materials filed with the tariff establish the foregoing points. Accordingly, it is R E A's position that the tariff should go into effect without suspension or investigation.

In its May 21, 1970 letter to the the Air Express Negotiating Committee suggested that the question of equity in the division of Air Express revenues between the airlines and R E A be addressed

by the Board in the framework of an investigation of the new tariff. R E A does not agree with that proposal. First, as we have stated above, we believe the tariff to be wholly lawful and justified, that investigation would serve no purpose and that the tariff should go into effect without suspension or investigation. Second, REA filed its Petition and Complaint with the Board on April 9, 1970 (Docket 22096). This document raised a number of key issues concerning Air Express, including the question of the division of Air Express revenues between the parties. It is R E A's belief that these issues and such others as it may be appropriate to add should be considered in an adversary proceeding within the framework of and pursuant to R E A's Petition and Complaint. While certain aspects of the relief requested by R E A may have been superseded by events subsequent to the filing of the Petition and Complaint, appropriate relief can be shaped as the proceeding advances.

Nor does R E A Express agree with the Air Express

Negotiating Committee's proposal that the fairness of the divisions be determined by the parties' fully allocated costs plus a fair return. The airlines' approach begs the question. One of the key issues in the proceeding before the Board is what standard should be applied to determine the fairness of the divisions. The question is for the Board to decide ultimately; the airlines' proposal supplies the end result now and would leave the Board with little more than an accounting function.

To summarize our thoughts:

1. Should the Board suspend the new tariff, the result would be a lapse of any agreement between R E A and the air carriers on August 1, 1970. REA would at that time have to determine the course which it should pursue before the CAB.

2. Assuming the new tariff and amendment go into effect and the outstanding issues which the parties have agreed to negotiate are resolved to everyone's satisfaction, it is possible that the foundation would be laid for a continuation of the Air Express service over a longer period than one year.

With experience under the new tariff and contract,

and after further negotiations under the letter of understanding, differences between the parties may be resolved completely without a long, expensive, burdensome investigation. Such resolution could make unnecessary any Board action on R E A's Petition and Complaint or Mr. deVoursney's May 21 letter. Further, even if a proceeding should then prove to be needed, the Board would have available to it the facts as they exist at that time rather than those which may no longer be significant.

Accordingly, we would propose that negotiations be resumed in August and that R E A and the Airlines report back to the Board after a reasonable time - perhaps by October 1, 1970. During that period the Board would defer action on Docket 22096.

3. R E A believes that any proceeding at the Board should include the issues raised in and should be conducted prusuant to R E A's Petition and Complaint in Docket 22096.

Sincerely,

Original Signed
TOM KOLE

cc: Mr. Andrew M. DeVoursney

PETITION AND PROTEST OF MUZAK

BEFORE THE CIVIL AERONAUTICS BOARD

In the matter of the application of
REA EXPRESS, INC.
for changes in the General Commodity Rates and Charges applying within the United States --- Section 5.

TO: THE CIVIL AERONAUTICS BOARD:

J. R. H. WILSON, in his capacity as a Senior Vice President of MUZAK, A DIVISION OF WRATHER CORPORATION, on behalf of said division and the more than 200 independent firms constituting the MUZAK franchise system, respectfully petitions and protests the proposed changes by REA EXPRESS, INC. in the General Commodity Rates and Charges (Section 5) filed on June 25th, 1970 with the CIVIL AERONAUTICS BOARD and scheduled for implementation on July 27th, 1970, which filing was by G. T. Miano, Agent.

A vital part of the proper functioning of the entire MUZAK organization relates to the expeditious shipment on a rigid schedule between specified franchisees of tapes containing the planned programs of background music that are the basis of the MUZAK program service. The nature of the MUZAK operation is such that tapes are circuited between the more than two hundred (200) franchisees on a time schedule that it is generally able to be established the musical selection that is played on a certain time and date at a specific location. One of the major marketing elements in the MUZAK organization is the factor that in major cities there has not been a repeat of a MUZAK prepared program in

the more than thirty-five (35) years that the MUZAK organization has been engaged in business and, further, that the music is programmed and played at a specific time of day.

The way this is accomplished is through an efficient and timely circuiting of the tapes between the various offices so that at least three (3) eight hour reels of tape are available to be played each day at the studios of the franchisee.

By way of further background to the Board, the MUZAK organization provides its planned programs of music by means of "central studio transmission". This means that the tapes are received and played from a central location to cover a specific geographical area. Each tape contains musical selections that have been selected to be played at a specific time of the day so that the programming serves a functional use insofar as it concerns the subscribers to the MUZAK program service.

Accordingly, efficient and timely shipment of tapes is, as mentioned above, a critical element in maintaining the quality and reputation of the entire MUZAK organization.

As of May 26th, 1970, the basic charge for the shipment of tapes between different locations was Six ($6.00) Dollars per shipment. Effective as of May 27th, 1970, said charge was increased to Eight ($8.00) Dollars. The proposed charge as contained in General Commodity Rates and Charges (Section 5) would result in the basic charge being increased to Thirteen Dollars and Thirty-Six Cents ($13.36). In other words, more than a one hundred (100%) per cent increase in costs within sixty (60) days.

It need not be dwelt upon that a more than one hundred (100%) per cent increase in freight charges will injure the economic structure pursuant to which MUZAK and its various independent franchisees conduct their business. Virtually all of the MUZAK franchisees are small businessmen who could not easily absorb a drastic increase in a basic operating cost such as shipping charges, let alone a one hundred (100%) per cent increase in a cost of a service that is critical and crucial to their survival.

The nature of the MUZAK operation is such that any other method of shipment than air can result in extreme delays in the timely receipt of the tapes containing the selections of music. As noted above, it is essential that the tapes be received on a specific date, played at a specific time and, in turn, passed on to another member of the MUZAK organization in a timely and efficient manner. Unfortunately, air freight is the most efficient and assured method of accomplishing the goal of the members of the MUZAK organization. REA EXPRESS, INC. is the only known firm capable of centralized handling of the needs of the independent firms comprising the MUZAK organization in the shipment of these critical tapes between the more than two hundred (200) franchisees. Without a firm such as REA to ship at reasonable costs, serious and irreparable injury could befall the small businessmen in the MUZAK organization. Even a major increase in the charges for shipping would have drastic repercussions upon these independent businessmen.

It is questioned whether, in the light of more than a one hundred (100%) per cent increase, there has been a showing by REA EXPRESS, INC. that their cost for providing service has

also increased more than one hundred (100%) per cent within the past sixty (60) days. It is further respectfully submitted that it is questioned whether such an increase is, under the circumstances, just and reasonable. It would appear as though perhaps an undue or unreasonable preference or advantage is being given to certain shippers with discriminatory result befalling small business firms of the type comprising the members of the MUZAK organization. By the permitting of this more than one hundred (100%) per cent increase in rates to become effective, it would place the entire MUZAK organization at a competitive disadvantage to not only others engaged in shipping, --- but to those engaged in providing competitive background music services where it is not essential to provide specific non-repetitive tapes containing programs of music that are to be played on specific dates and at specific times and locations. These proposed rates discriminate against the small businessman, especially where they are dependent upon REA air cargo as a vital artery to supply the very basis of their existence.

Accordingly, as repeatedly set forth above, the result of this increase can have serious repercussions with overtones of extreme disadvantage and discrimination befalling the small businessman as a result of the proposed change of rates to an almost confiscatory level.

There are no alternative methods, as noted, that can permit the MUZAK organization at this moment to continue its operation with the same efficiency as is now inherent in the system.

Wherefore it is respectfully prayed that the proposed implementation of the subject rates be suspended and an in-

vestigation undertaken by the CIVIL AERONAUTICS BOARD as to the justifiable application of the abovementioned discriminatory rates as the same relates to shippers and others similarly situated as in the MUZAK organization.

J. R. H. WILSON

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

J. R. H. WILSON, being duly sworn, deposes and says that:

He is an officer of MUZAK, A DIVISION OF WRATHER CORPORATION, to wit, its Senior Vice President. That he has read the foregoing petition and as to the contents therein contained he does hereby state that the same are true and accurate to his best information, knowledge and belief. That he has made this affidavit knowing that the CIVIL AERONAUTICS BOARD will rely thereupon for purposes of determining the granting of the subject petition. That he has signed the foregoing petition in accordance with the authority vested in him by the Board of Directors of the subject corporation.

J. R. H. WILSON

Sworn to before me this 8th day of July, 1970

MICHAEL M. GOLDBERG
NOTARY PUBLIC

MICHAEL M. GOLDBERG
NOTARY PUBLIC, State of New York
No. 60-6562050 - Westchester County
Commission Expires March 30, 19 72

COMPLAINT OF AIR FREIGHT FORWARDERS

BEFORE THE

UNITED STATES CIVIL AERONAUTICS BOARD

Washington, D. C.

Docket No.

Agreement CAB 17935-A4

COMPLAINT OF AIR FREIGHT FORWARDERS REPRESENTED BY THE AIR FREIGHT FORWARDERS ASSOCIATION AGAINST, AND REQUEST FOR SUSPENSION AND INVESTIGATION OF, AIR EXPRESS TARIFF AND MEMORANDUM IN OPPOSITION TO AMENDED AIR EXPRESS AGREEMENT

I. INTRODUCTION AND STATEMENT OF THE ISSUES

Three months ago REA Express, Inc. (REA) and the nation's airlines had reached an impasse over how to price air express service and how to divide the revenues between them. At that time REA categorically advised the Board that there was a "gulf between the parties" so wide and so long-standing that it could not be resolved without intervention of the Board.[1/] Now suddenly, mirabile dictu, these two parties appear arm-in-arm with a proposed "solution" to their insoluble problem. The "solution" involves a scheme under which they would (1) jointly and

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1/ REA Petition and Complaint, "In the Matter of Air Express Service," April 9, 1970, p. 5.

quietly invade the air freight forwarder market in the guise of an air "express" tariff and Agreement; (2) substantially eliminate forwarder participation in air freight by lowering rates to the public for traffic in the historic forwarder market below existing forwarder rates and below the apparent total cost of such service; and, (3) accomplish this through the device of the airlines subsidizing REA in the short-haul, low-weight traffic and REA subsidizing the airlines in the intermediate and long-haul, higher-weight traffic.

Though appearing to be totally candid by labeling the proposals as a "major reformation of the air express rate structure" and "a basic change in the division of revenues between the airlines and REA," REA and the airlines have understandably not alluded to the even more "basic" and "major" implications of their proposals. For the parties would at a single master stroke not merely create a change in rate structure and allocation but would interject REA into the air freight forwarding business without a re-examination of the serious statutory and policy problems in such intrusion; at rates to the shipping public which are substantially below existing forwarder rates at the distances and the weights involved; at a division of revenue to REA that would clearly appear to be below the cost of service by REA and hence destructive and predatory in nature; and at a monopoly "priority" in airlift that is unavailable to the independent forwarders.

II. SUMMARY STATEMENT OF POSITION

The Air Freight Forwarders Association on behalf of the signatory forwarders whose powers of attorney are attached hereto[2/] protest and request the suspension of the recently-filed air express rates,[3/] and request disapproval of the amended Air Express-Participating Air Carrier Agreement relating thereto, including the division of rates between air express and the airlines provided for therein. Grounds for these requests are that the proposed rates and divisions are unjust, unreasonable and unjustly discriminatory, unduly preferential, and otherwise unlawful; and that the Agreement and terms thereof are not in the public interest and are otherwise in violation of the Federal Aviation Act as amended.

As demonstrated below, the instant tariff proposal and agreement are not in the public interest because they would foster an unsound transportation system, would adversely affect the air freight forwarders, would result in a deprivation of adequate service to the shipping public and would be unlawfully discriminatory. At the very least, the drastic changes proposed must be fully explored in hearings, especially since they involve both rate fixing by the entire airline industry and a plan to

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[2/] Submitted with the original copy of this complaint are Powers of Attorney which have been received to date. A list of participating forwarders is attached as an Appendix.

[3/] General Commodity Rate and Charge Revision, Section 5, Air Express Tariff No. 1, C. A. B. No. 1, effective July 27, 1970.

offer a substantially expanded and new competitive service in markets already served by forwarders through a chosen monopolistic instrument -- both of which actions are per se violations of the anti-trust laws.

III. DISCUSSION

A. There Is Grave Question Whether REA's Present Air Express Service Itself Is Any Longer In The Public Interest; Certainly These Doubts Should Not Be Used As A Springboard To Expand REA's Operations Into Additional, Totally New Ventures.

REA alleges, it goes without saying, that its air express service is in the public interest and that as a company, notwithstanding technological changes, it should be allowed to continue to participate in air transportation in some form. Both these assertions are debatable.

While REA's historic mission has been to provide a unique air express service, there is grave question whether there is any longer a need for it and indeed whether "air express" is any longer unique or is anything more than a service that is "special" in name only. All air freight service is now by its nature "expedited" or "express." At the same time, REA no longer provides air service through its own employees to numerous small cities and towns, having substantially reduced the breadth of its own operations and services in recent years. A number of forwarders, in fact, have more stations of their own, manned by their own employees, than REA's 34 "exclusive" air stations. The forwarders

offer at least an equivalent service by providing next-day delivery. The carriers themselves provide "signature" services and have had some recent success with a small package "next-flight-out" service from airport to airport. Moreover, if the forwarders were given a rate equal to the "rate" paid to the airlines by REA for very small package service to and from secondary points instead of the prevailing minimums, they could offer the same, competitive rates as REA at these points. Likewise, in terms of presenting clean traffic to the airlines in digestible form with major ministerial services performed, the forwarders as a matter of common knowledge excel REA despite the latter's literal obligations under the Agreement to perform numerous services for the airlines.

Accordingly, at a minimum, we do not believe the Board can conclude that REA's continued service is justified -- especially if it is at the expense of the forwarders -- without a thorough examination of the current facts in that regard in a hearing. In fact this may be as good a time as any to examine into the need for REA's air service at all, never mind its incursion as a company into traffic that is neither historically nor otherwise "air express" traffic. The Board long ago expressed awareness of the possible, eventual need for phasing-out REA when, rather than granting it permanent authority, it renewed REA's exemption with the admonition that this "will enable REA to carry on its air

express operations until such time as the Board may determine that such operations are no longer in the public interest" (9 C. A. B. 473, 489).

In short, if the onward march of industrial change and air traffic development has resulted in REA's becoming a hollow shell vis-a-vis its air express service, propped up only by the medication of special "rates" spoon-fed to it, is a regulatory agency obliged to infuse into the old frame -- more, is it justified in so infusing -- a completely different kind of operational life, much less to still call the resulting creature by its old name? Any action in this regard should in any event come at most only after a searching hearing and in a proceeding openly and frankly directed to such question. But in this limited proceeding now before the Board, if air express is to exist as a separate class of service to be performed by REA as the separate company, the only action that the Board can lawfully take here, in our judgment, is to continue the consignment of both REA as a company, and air express as a service, to their historic role of very small shipment traffic under an extra, expedited service and at rates to the public commensurate with such service. That is at best the limited option available to the Board at this time and without a hearing.

B. The Rate Proposal Oversall Appears To Be Non-compensatory, In The Absence Of Any Data To The Contrary.

Since 1966, air express rates in major forwarder markets have declined to less than half their former levels (AFFA Exhibit-1) while air freight rates and taxes payable by the forwarder will shortly within a few months have risen 37 percent. (Order 70-5-2, May 1, 1970, Docket 22157 (mimeo., p. 2).) Indeed, this tariff filing alone involves in the case of long haul 300 lb. shipments rate reductions of 40 percent, in one fell swoop. Considering these facts and the cost inflation indicated in the airlines' and REA's own justification, of which all are well aware, this is clearly an irrational rate filing which should be suspended and investigated. 4/

C. The Tariff Filing Fails To Comply With Section 221.165 Of The Board's Economic Regulations.

Section 221.165 requires, inter alia, that the issuing air carriers or their agert shall submit as part of the justification

"Estimates of costs of service" (Section 221.165(h)(1)

and

"Estimates of the aggregate effect of the new or changed matter upon such carrier's traffic and

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4/ To the extent that the rate reductions since 1966 may have in fact been in response to suggestions made at that time that air express rates were too high (see Order E-23315, Docket 17037 (1966)), we submit that the present action reducing rates to less than half the level for air "express" service in effect at that time, and below air freight rates in effect now, is somewhat of an overreaction to say the least.

revenues, and an explanation of the basis for the estimates" (Section 221. 165(b)(2))

The filing parties have done neither. What they have done instead is to submit some general system cost data with regard to (1), and merely apply the new rates to their old traffic mix as to (2). While it may be argued that such an approach is appropriate in a rate level case, it is entirely inappropriate in a case such as this where the carriers, by their own admission, are working drastic changes in the rate structure. Although required, there have, therefore, been supplied no "estimates of cost of service" to justify the 50 percent increases in sales for traditional express traffic and the 40 percent reductions in the long haul markets at the higher weights. And there have been no "estimates of the aggregate effect" on the carriers' traffic of the changes actually made although the effect of increases and decreases in the magnitude of 50 percent will necessarily be great indeed.

A further clear violation of the Regulation is the failure of the parties to include as an element of their costs or revenues, or to otherwise deal with the "arbitraries" that are periodically paid to REA. These involve millions of dollars, there having been apparently $1. 5 million of such payments in 1969 and $3 million in 1970. Any justification that fails to deal with such sums is obviously defective.

D. No Economic Justification Has Been Supplied By REA To Support The Division Of Revenue To Be Retained By It For Its Services In The Long-Haul, 100-300 Pound Markets; In Fact, It Would Clearly Appear That REA Would Become Insolvent If These Rates And Divisions Were To Become Effective And Would Shortly Have To Seek Relief From The Airlines And The Board.

Air express services, just as air forwarder services, include ground services and the multitude of related services required for effective and expedited door-to-door service for the shipper. The total cost picture therefore must be considered in viewing rates for such service, including not only the return to the airlines for their line-haul but the returns to the operating arm (be it air express, air forwarder, airline or other agency) that is performing the additional services to the shipper above and beyond the air line-haul. In brief, the air express rates to the public, the share of the airlines and the share of REA are obviously inextricably intertwined; and the Board cannot and should not properly focus only on the economic validity of the return to the airlines under such rates.

We do not know by what witchcraft REA hopes to convince even a casual analyst that the division between REA and the airlines in the proposed rate structure is "on a more economic basis" and that REA will receive "as its share of the revenue a relatively, constant dollar amount, regardless of the length of haul." (REA Statement of Information.)

In the areas in which it principally seeks to break into and cut across forwarder traffic (that is, the 100-300 pound weights at the intermediate and long-haul distances) there is no data furnished to support the share of the total revenue to REA at these weights and distances. Indeed, it is abundantly clear from the evidence that is available that REA's share would result in its subsidizing the airlines here in order that it may make an incursion into the air freight forwarding market.

In the first place, by REA's own admission the Schedule I cost exhibits furnished by it contain "several serious understatements" (REA Justification). Thus, concedes REA, the shipments to and from the non-exclusive service points of REA "cost substantially more" than shipments to and from the exclusive points for reasons openly set forth in the "Justification." Yet despite the fact that 47 percent of REA's total shipments move between non-exclusive airport cities, REA has not furnished any data on what are its admittedly substantially higher costs for these shipments. The omission to do so by itself warrants a suspension of the rates and of the divisions filed. Similarly, two other cost understatements frankly admitted by REA are the omission of the added costs for the "additional miles" travelled by air P&D vehicles compared to surface vehicles, and the added costs resulting from the priority which Air Express as a company allegedly gives to Air Express shipments. Thus, in these three significant aspects their real costs are not shown.

In addition to these conceded "understatements" or failures to produce cost-supporting justification at all to support their division of the revenues, several other major errors have been made in the filing which also by themselves would require suspension.

First, the projection of new revenue and the returns for REA are based on the assumption that the mix of short-haul versus long-haul, low-weight versus high-weight shipments will remain the same under the proposed structure as it is under their present structure. In sum, except for an estimated diversion of a number of shipments to air parcel post, REA has simply repriced its basic statistical sample on the new rate structure. It is evident that this is highly fallacious and that REA's mix will substantially increase in the long-haul, higher-weighted shipments with even more substantial resulting loss to it than if the mix remained as it is. Since the proposed rates undercut the forwarder at the long-haul 100-300 pound rates and since REA has baldly admitted that its purpose is to be competitive with the forwarders and to enter this market, it is axiomatic -- with or without the priority that the forwarder does not have -- that REA will garner unto itself most of the existing forwarder traffic. REA, under its present structure, moves only a minimal amount of traffic in the 100-300 pound range at the intermediate and long-haul distances. It is patent therefore that the proportion of this traffic to its present low-weighted traffic at short-haul and intermediate distances

will increase and that its consequent net return per shipment will decrease.

Second, in computing its own revenue share, REA has completely failed to take into consideration the 5 percent tax which, under the Airport and Airways Act effective July 1, it will have to pay to the airlines on the airlines' share of the revenue. This added payment will result in an even more substantial reduction in REA's share of the air express revenue. The actual share of REA at certain points is shown in AFFA Exhibit-2 attached hereto. (This reflects, moreover, that REA in its eagerness to break into the forwarder market and to cut below the forwarder rates has, incredible though it may seem, agreed to accept, as its total share of revenue at the longer hauls and at 300 pounds, a dollar amount that in most cases is less than its share at 200 pounds in the same markets, and in many cases less than its share from 50 pound shipments in the same markets! The irrationality of the instant proposal is again underscored.)

Third, the sole conceivable basis for REA's justifying its new long haul reductions is apparently by comparing them with forwarder rates or costs since it attempted to peg the new rates close to but below existing forwarder levels (REA Exhibit-3). However, in an apparent eagerness to offer a rate to the shipping public that is just below the forwarder rates in the 100-300 lb. weights, REA and the airlines have not even employed for comparison purposes in their own Exhibit 3 the correct

forwarder rates that will have become effective even before the proposed date for their own tariff of July 27, 1970. Our Exhibit 3 attached hereto indicates the actual rates for the top 15 markets (as listed by the airlines) for Airborne, Emery, Novo and Wings & Wheels in effect at various times this month. This exhibit discloses that the REA rates at the longer haul, higher weighted distances will be substantially below that of the forwarders. REA proposes to under-cut the forwarders' rate structure by several dollars per shipment at all weights between the fifteen major markets listed in its exhibits. It shows even a greater reduction from the forwarders' levels in minor markets than indicated in major markets.

In any event, the record is barren of any basis for concluding that REA, as a new entrant into the forwarder business, could even match the experience of the existing forwarders at controlling costs, much less under-cut their rates by substantial margins. REA should at least be required to assume the burden of proving just how its proposed new operation would be more efficient than that of the existing experienced forwarders. This it has not even attempted to do. In 1969, the representative forwarders' profit per shipment ranged from approximately $1.60 per shipment after tax to zero. (AFFA Exhibit-4.) Nothing in the meager cost data submitted by REA indicates that it can operate at several dollars per shipment less than the existing forwarders and still make a profit. It is obvious that should these same forwarders be

required, as they would if these rates are approved, to react to the proposed massive reduction in the going rate, profitability would be eliminated and converted to wholesale losses. The point here, however, is that any reference to forwarder rates as a basis for REA costs is totally unrealistic.

Fourth, REA's cost data is as defective as the airline data because it is not directed to a change in rate structure. What little cost data has been submitted by REA is system data despite the fact that the proposal is a violent restructuring of the rates involving increases of 30-50 percent generally in the short/medium haul markets for traffic in the below 100 pound category, with reductions of up to 40 percent in the long haul markets at higher weight levels. (REA Exhibit 2) This restructuring not only has not been justified but it is so total a revision of the structure as to render it absolutely impossible for REA to justify the changes in its share of the revenue on the basis of its own historic costs, even if it had attempted to do so. As a result of the new rate structure, REA's traffic mix and operations would obviously, as noted earlier, change totally. Its traditional express traffic would become a small part of the total.

E. REA Is Attempting To Finance Its Uneconomic Invasion Of The Long-Haul, Higher Weight Market By Increases In Its Air Express Rates At The Lower Weight, Short And Intermediate Haul Markets Which Are Of A Magnitude That The Board Has Recently Said Were Unjustified In The Airlines Regular Air Freight Service.

In order to enter the long haul forwarder market above 25 pounds REA proposes to increase its short and medium haul rates by as much as 60 percent. (REA Exhibit 2) The Board has recently ruled that similar but less drastic proposals by the direct carriers in the short haul market should be suspended and investigated. The Board in fact set guidelines for the direct carrier industry limiting increases to 10 percent at any given time. (Order 70-5-2, May 1, 1970, Docket 22157.) And this position was taken in the face of much more complete cost data than is before it in the present proposal.

F. The Air Freight Forwarders And Ultimately The Shipping Public Would Be Adversely Affected By The Present Air Express Proposal, Contrary To The Public Interest.

1. If The Proposed Rates And Divisions Are Allowed To Become Effective, Air Freight Forwarders Would Be Deprived Of Most Of Their Traffic At The Hands Of A Below-Cost Competitor.

The Board has said that air freight and air express have always been somewhat competitive (Railway Express Airfreight Forwarder Application, 27 C. A. B. 500, 536 (1958).) Under the instant proposal,

REA and the airlines have zeroed-in on the air freight forwarders' prime markets and thus would be completely competitive -- only by the device of REA's agreeing to accept as its share amounts so low that they are manifestly below the cost of its service. As a result of the rate structure of the airlines, air freight forwarders have heretofore been compelled to concentrate on and depend on the selling of shipments received from customers at weights of 300 pounds and below. In terms of number of shipments, there can be no dispute that the vast majority of existing forwarder traffic is in this category. Thus, as a representative example, Airborne estimates that 92. 7 percent of its shipments were 300 pounds and under. Moreover, the larger part of this traffic is in the long-haul markets (AFFA Exhibit-5) -- precisely where REA has directed its thrust.

With substantially lower rates and the service priority that REA would enjoy (AFFA Exhibit-3), there would be no question that most if not all long-haul forwarder traffic in the 100-300 pound category would divert. The service "priority" would be especially critical in this instance as an element in diversion in view of the fact that the service to the forwarders by all airlines would be downgraded as a result of the expanded volume of priority "express" traffic that would materialize and preempt present capacity on which forwarders now rely.

It should be noted in passing that what is at issue is hundreds of millions of dollars of the independent forwarding industry revenue, not

the five million increase shown by REA and airlines. The latter merely reflects the net revenue increase from applying the new rates to old REA traffic.

The result of the current proposal is obvious. There would be mounting losses by both the forwarders and REA, with perhaps neither surviving. As noted elsewhere herein, the airlines could during the course of the year voluntarily agree to "adjust" REA's share by granting them "arbitraries" as they have this past year. No such succor would be available to the forwarders of course to assist in their survival. There certainly can be no contention that the current forwarder rates are too high, or that there is any "fat" or profit in the forwarder rates which would allow the forwarders to meet REA's rates. Indeed, the forwarder commonly regarded as the most profitable in the business (Emery) earned in 1969 only $1.60 per shipment after taxes; Airborne only 45¢; Wings & Wheels 49¢; and Novo none. (AFFA Exhibit-4) The average for the entire industry in 1968 was only 11¢ (Forms 244). The industry as a whole is earning well below an adequate return on investment (Ibid.). Since there is no indication whatsoever that REA is a more efficiently-run operation than any one of these forwarder operations, where REA's share of the revenue will be (as in most of the proposed rates long-haul and over 100 pounds) $1.60 or more below the existing forwarder rates, it is clear that in these markets and at these weights and at the proposed prices REA will be losing money on every

single shipment. Indeed, the more it carries the more it will lose. Since traffic will inevitably move at the cheapest rate for the same general class of service (as the Board has noted repeatedly in the past), it would be no time before existing forwarders would be ousted from their share of the market which they have developed over many years. This shift would not result from any more expeditious or efficient service but from the below-cost pricing that is here proposed.

The type of operation proposed can obviously have no substantial public benefit nor would it be able to exist for any length of time without "somebody's giving." Any attempt by the forwarders to meet the proposed rates will result in a return to them that is below their cost of operation. If they do not meet it, REA, as a fighting ship, will gather to itself most if not all of the traffic and would doubtlessly be back to the airlines in short order or to the Board in a plea for "more." The past history of the payment of substantial "arbitraries" to it would so indicate. The public can only be the ultimate loser in such destructive and predatory competition.

2. The Air Freight Forwarders Would Suffer From Unfair Competition Because Of The Special Status That REA Would Enjoy.

a. The Airlines And REA Must Be Denied Entry To Air Freight Forwarding Under Established Board Policy, Whether That Entry Is Attempted Directly Or Indirectly.

The current filings are but a poorly-disguised attempt by REA and the airlines to get a foot in the door to air freight forwarding domestically[5/] while at the same time continuing to benefit from the historical preferential relationship and monopoly enjoyed by air express. Although the rates proposed appear clearly to be non-compensatory, especially as to REA, REA is apparently willing to absorb substantial losses for the short term in order to gain entry, presumptively with the expectation of obtaining compensatory rates later on.[6/]

REA is no stranger to earlier evasive efforts to operate as a domestic forwarder in violation of the Act and without running the gauntlet of a direct application for such purpose with the serious issues such application would raise. The Board has been alert to stifle such circuitous excursions by REA and should be equally alert in doing so here. In an earlier effort where REA attempted to use its surface operation in an air forwarding function, the Board was required to sustain its position as far as the Supreme Court to the effect that REA was operating in violation of the Federal Aviation Act (REA v. C. A. B., 345 F. 2d 445, cert. denied 382 U.S. 879 (1965). More recently, REA used the device of a

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5/ REA has already filed for complementary Part 297 authority directly. The independent air forwarding industry will address itself to that filing more specifically in due course.

6/ Again, REA's practice of coming back to the airlines for more money in the form of "arbitraries" should be noted.

secret acquisition of control, through nominal owners, of an existing air freight forwarder but was thwarted by the Board although only after extended hearing (Railway Express Agency Enforcement Proceeding, Order E-26199, Docket 17287). That the technique of REA is a different one here, or that REA is here with the acquiescence of, and in concert with, the airlines does not alter the essential character of REA's prospective operations.

We have shown to the fact that the new concept filed here, for all practical purposes, makes REA a forwarder -- and with priority. It is even more than this, for the proposed venture into a different form of service -- made in concert with the airlines -- will give the airlines their own "in-house" forwarder, something they unsuccessfully attempted to persuade the Board to approve fifteen years ago (ACI/Application for Air Freight Forwarder Authority, 21 C. A. B. 531 (1955)). As the Board noted in the Universal Consolidated Industries case less than two years ago (Docket 20353, Order 68-12-86), this would "involve a departure from a policy originally established by the Board in 1948 in the first Air Freight Forwarder Case of not permitting the same company to operate both as a direct and indirect air carrier," and any such proposal would at a minimum require a full-scale hearing. Certainly no less is required here if at this period in air freight development, the airlines are now indirectly seeking to install a preferred air freight forwarder of their own with whom they would negotiate rates and in whose profits they would share.

b. Allowing REA To Negotiate Favorable Rates With The Airlines While Denying The Same Privilege To Air Freight Forwarders Is Discriminatory, Unfair Competition, And Is Also Otherwise In Violation Of The Act.

The process of rate negotiation involved in the REA/airline relationship intrudes an elementary and profound question -- one regarding the validity of the continued operations of "air express" in even its current, limited "express-type" service by the device of the airlines and REA concluding rate agreements for such service and a division of the spoils. Such rates and divisions thereof are of course no more than arrangements under which the parties agree that the airlines shall compensate REA for the latter's performance of certain air express functions for them.

As long as the Board's view was that REA, in performing air express service, was an agent of the air carriers, this hybrid conception left some room, albeit slight, for validating rate or compensation agreements between REA and the airlines and distinguishing REA from air freight forwarders who are barred from negotiating rate agreements with the airlines. Indeed, it was just such alleged distinction that was advanced to the Court by the Board and that led to the decision sustaining the Board's interpretation of the Act to the effect that forwarders could not enter into and file rate agreements with the airlines (Airborne Freight Corp. v. C. A. B., 257 F. 2d 210 (D. C. Cir. 1958)).

But in recent years the Board has been denominating REA in its air express operations as an "indirect air carrier" and has in effect appeared to alter its concept of the nature of the relationship of the parties to each other so as to extend a greater degree of independence to REA. While it may be arguable that this changed view has not destroyed the earlier "rationale" distinguishing REA in its limited "express" operations from air freight forwarders so as to still permit the former, but not the latter, to negotiate rates, the alleged distinction clearly cannot survive the negotiation by the parties of the "forwarder" rates and service presently before the Board. Calling a spade a hoe doesn't make it so; and calling the service that is now before the Board "air express" so as to approve rates by negotiation for such service when the rates cover almost the entire range of forwarder traffic similarly doesn't alter the real character of the service. We believe, therefore, that for this reason also the Board is without authority under the statute to discriminate in favor of REA as one class of indirect air carrier by permitting it to negotiate rates while continuing to bar air freight forwarders as another class of indirect air carrier. There is no statutory basis for such distinction.

G. <u>The Shipping Public Would Receive Inadequate Service Under The Instant Proposal.</u>

1. <u>Air Freight Service Will Deteriorate Because The Airlines Will Be Flooded With Non-Containerized Freight.</u>

Under the revised and radically different rate structure here proposed, there will inevitably be, as we have pointed out, a drastic upward surge in the volume of air "express." With the substantially lower rates and service priority now contemplated, REA will be tendering planeloads of "express" to the direct carriers. This traffic will at best be tendered in loose shipments. Realistically, we believe it will be dumped on the carriers with little or no facilitation, as in the case of REA's present traffic. Such action in either case runs counter to everything the industry is attempting to achieve through containerization. It would in fact be grossly inefficient and accordingly not in the interest of the shipping public.

2. Air Shippers Will Be Deprived Of A Choice Of Services And Forced To Subsidize REA's Predatory Competition Against the Forwarders.

Air freight forwarders offer service to several hundred airport cities and thousands of surrounding suburbs. Generally speaking, however, because of traffic patterns even the largest forwarders are able to consolidate regularly no more than to 40 or 50 markets. To the balance of the country, that is, to other points, the forwarder must pay the airline minimums.

As an illustration of this, forwarders moving a 100 lb. shipment from New York to Charleston, S. C., would pay the airline $10.00. In contrast, however, REA would pay the airline only $2.50 for the same shipment in the same market. This $2.50 is a constant air express

cost even if two or three air carriers are needed to complete the carriage. At the same time, the air express rates in the secondary markets have been raised 30-60 percent. It is obvious from this and from the facts developed in the Minimum Charges per Shipment Case (Docket 20398) that what is being here proposed is that the airlines and small shippers in outlying points would now jointly subsidize REA in the high cost minor markets in order to make it possible for REA to compete with the air freight forwarders in the long haul markets.

As a result of this, the shipper is being denied a choice of two services that he has been accustomed to. He has been utilizing REA where it is cheaper on smaller shipments and the forwarders at lower cost between major markets and for larger shipments. To the extent that the shipper is now being called upon to pay what may well be unreasonable rates for small express shipments, he is being deprived of a reasonable service. And to the extent the forwarders would be foreclosed from the long-haul markets, the shipper would be deprived of the benefits of competition among forwarders in such markets. In both cases, the public interest is violated, and the airlines themselves would lose the benefits of forwarder promotional efforts, such efforts having generated $250 million in domestic forwarder revenues in 1969.

H. Long-Haul Trunk Carriers Would Profit At The Expense Of Short-Haul Local Service Carriers Under The New Proposals.

It is obvious from an examination of the rate structure as proposed, and the share of revenues to the airline under the proposals, that the local service carriers have been "taken," doubtlessly unwittingly, by the major trunk carriers. It would appear that the locals will gain nothing from the rate changes but that the lion's share of the division of revenue will fall to the long-haul carriers. (See, e.g., AFFA Exhibit 2.) Doubtlessly, the local short-haul carriers will have some "consolation" in knowing that under the rates as proposed the present minimum guarantee to them of $2.44 per shipment will be preserved in the form of a $2.50 guarantee (Air Carriers' Statement of Justification, p. 3).

I. The Airlines And REA Can Secure The Same Additional Gross Revenue They Would Obtain From Their Dangerous Proposal By Simply Adding An Across-The-Board 50 Cent Increase Per Shipment To The Present Structure.

If we are mistaken in our belief that what the airlines and REA are really after is getting their foot in the air freight forwarding door, but instead are merely interested in an additional $2.5 million in revenue each, we do not see any warrant for the revolutionary restructuring of "express" rates as proposed and REA's movement into air forwarding under the guise of "express." If "more money" is their limited objective and if the Board should conclude that additional revenue is warranted (or required) then there is a rational way of achieving that limited stated objective that would be non-controversial.

We suggest to the Board as a constructive alternative that the $2.5 million for each can be achieved by a simple 50¢ per shipment add-on to the existing air express rates. The ease by which this may be accomplished, compared to the contortions proposed, is indicated by REA's own Exhibit 2, which we have revised and as revised have appended hereto (AFFA Exhibit-6). With 10 million shipments, the 50¢ add-on would painlessly provide the same $5 million total return, for sharing on any equitable basis between the parties; and the shipping public could easily bear it. At practically every distance and at every weight, the additional 50¢ would be miniscule. In fact, for the traditional air express shipper, the 50¢ add-on would be much more palatable than the 30-60 percent increase now proposed by the air carriers and REA. Such an increase would be as fair and as equitable as the recent Board action allowing the carriers to round their passenger fares upward to the nearest dollar; what was there approved in all probability approximated no less than a 50¢ add-on.

There may well be other acceptable formulae for providing REA and the airlines with needed revenue, if any, such as other more moderate types of increases on the air express traffic now carried.

The alternatives we have suggested could accomplish the revenue objectives of the parties without stifling the promotional efforts of the forwarders and jeopardizing their investments in air freight, without destroying the present system which allocates airlift in a manner which benefits the broadest possible segment of the shipping public and which avoids turning

over such function to a monopolist, and without jeopardizing the approximately $250 million in revenues which the forwarders generated domestically in 1969.

* * * * *

In conclusion, we would emphasize to the Board again that the structure, divisions and Agreement proposed (for which only a completely insufficient amount of time has been available to answer) constitute the most corrosive assault on the future of the air freight forwarding industry in many years. It is almost inconceivable that a proposal so revolutionary and so rife with destructive potential should be permitted to become effective without an exhaustive examination in a proceeding directed to that purpose.

We respectfully submit that the Board should not allow itself to be influenced in its determination in this matter by concern that air express service may cease at the end of this month unless the Board surrenders to REA and the airlines. These are the very in terrorem threats which the parties have used with respect to the public and with respect to each other in the recent past, but the air express Agreement was nonetheless extended. It is manifest that neither party is likely to cross the ultimate line and surrender this service in view of the respective benefits that each receives from it. But even if this were to happen, the public would lose nothing as a result of the termination. As we have noted, air express in reality is no longer a distinctive type of service. The entire forwarding

industry is ready to take up any resulting slack and to serve the shipping public that is now shipping by air via REA. It is more than capable of doing this.

The Board should accordingly suspend the subject tariff and order its investigation, and disapprove the amended Air Express Agreement.

Respectfully submitted,

/s/ Louis P. Haffer

Louis P. Haffer

/s/ Robert N. Meiser

Robert N. Meiser

Haffer, Goldstein & Meiser
1730 Rhode Island Avenue, N. W.
Washington, D. C. 20036

Counsel for the Air Freight
Forwarders Association

July 9, 1970

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Complaint and Memorandum on all trunkline and local service carriers and on REA Express, Inc., by mailing a copy thereof to each such party or its attorney in a properly-addressed envelope with postage prepaid.

/s/ Robert N. Meiser

Robert N. Meiser

July 9, 1970

APPENDIX

The Air Freight Forwarders Association is representing in this matter the following forwarders whose Powers of Attorney are attached to the original and duplicate original of this document.

Airborne Freight Corporation

Air-Land Freight Consolidators, Inc.

Circle Airfreight Corporation

Emery Air Freight Corporation

Jet Air Freight

Novo Air Freight

Shulman Air Freight

Wings & Wheels - AEI

WTC Air Freight

AFFA Exhibit - 1

AIR EXPRESS RATES 1966-70
(New York--West Coast Markets)
(300 lb. shipment)

Date	Rate per Cwt.	Total Charges	Percent Reduction
March, 1966	$77.40	$232.20	--
May, 1970	57.00	171.00	26%
July, 1970	35.60	106.80	54%

Source: Air Express Tariff No. 1, C. A. B. No. 1 for periods indicated; Order E-23315, March 3, 1966, Docket 17037.

AFFA Exhibit - 2

	Proposed Rate	Airline Share	REA Share	Trans. Tax	Net to REA	ACI Pickup & Delivery
Scale 1 & 2			New York - Washington			
1 lb.	8.50	2.50	6.00	.13	5.87	7.50
25	11.28	2.50	8.78	.13	8.65	7.50
50	14.17	2.50	11.67	.13	11.54	7.50
75	14.56	2.93	11.63	.15	11.48	7.50
100	15.00	3.90	11.10	.20	10.90	7.50
200	25.90	7.80	18.10	.39	17.71	7.50
300	38.85	11.70	27.15	.59	26.56	10.65
Scale 12			New York - ISA			
1 lb.	8.50	2.50	6.00	.13	5.87	6.55
25	13.88	5.40	8.48	.27	8.21	6.55
50	19.49	10.80	8.69	.54	8.15	6.55
75	24.74	15.53	9.21	.78	8.43	6.55
100	30.00	19.62	10.38	.98	9.40	6.55
200	49.30	31.20	18.10	1.56	16.54	6.90
300	65.10	46.80	18.30	2.34	15.96	10.35
Scale 24			New York - Los Angeles			
1 lb.	8.50	2.50	6.00	.13	5.87	8.20
25	18.18	9.60	8.58	.48	8.10	8.20
50	26.95	16.74	10.21	.84	9.37	8.20
75	35.86	23.49	12.37	1.17	11.20	8.20
100	44.00	31.20	12.80	1.56	11.24	8.20
200	78.70	62.40	16.30	3.12	13.18	8.20
300	106.80	93.60	13.20	4.68	8.52	13.05

Source: REA Appendix B; ACI tariff effective August 1, 1970

153(a)

BEFORE THE

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

DOCKET NO. 22352

REPLY BY REA EXPRESS, INC., AND PARTICIPATING AIRLINES TO REQUEST FOR SUSPENSION AND INVESTIGATION FILED BY MUZAK, AND TO COMPLAINT AND REQUEST FOR SUSPENSION AND INVESTIGATION FILED BY AIR FREIGHT FORWARDERS ASSOCIATION

Tariff:	General Commodity Rate and Charge Revision, Section 5, Air Express Tariff No. 1, C.A.B. No. 1, Issued by G. T. Miano, Agent, as shown in Exhibit No. 1 to June 25, 1970 Statement
Effective Date:	July 27, 1970
Territory:	Between all Air Express Points in the United States, Canada and Puerto Rico

G. T. Miano
Agent
219 East 42nd Street
New York, New York 10017

July 16, 1970

BEFORE THE

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

DOCKET NO. 22352

REPLY BY REA EXPRESS, INC., AND PARTICIPATING AIRLINES TO REQUEST FOR SUSPENSION AND INVESTIGATION FILED BY MUZAK, AND TO COMPLAINT AND REQUEST FOR SUSPENSION AND INVESTIGATION FILED BY AIR FREIGHT FORWARDERS ASSOCIATION

INTRODUCTION

As indicated in the Statement submitted with the tariff filing on June 25, 1970, the proposed tariff matter constitutes "a major reformation of the air express rate structure". In spite of the broad changes proposed, only two protests have been filed, one from a shipper, Muzak division of Wrather Corporation, and one from the Air Freight Forwarders Association (AFFA).*

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* A third protest, respecting a rule only, was originally tendered and has been withdrawn.

THE MUZAK PLEADING

The Muzak pleading selects one rate comparison -- apparently Scales 1 and 2 at 43 pounds - - and proceeds with general allegations of unlawfulness. So the one shipper protest is confined to one scale and one weight, while asking for suspension and investigation of the entire tariff filing. The pleading does not examine the entire tariff, or the various reductions, or the aspects of the adjustment which are favorable to shippers.

As noted in the Statement submitted with the tariff filing, the reformation of rates is "in a direction consistent with the cost of providing express service". The matter of survival of the express service desired by such shippers as Muzak makes it imperative that major efforts be made to put all shipments on a paying basis.

Using the May 28, 1970 charge of $8.00 as an example, how can anyone suggest that a 43 pound shipment (the usual weight of a Muzak tape shipment) can be given expedited pickup, expedited handling to an airport, expedited handling from an airport and expedited delivery to consignee for a total of $8.00? In these days of high wages and high overall costs the ground handling alone would cost more than $8.00. In addition, the air express service also provides expedited, non-consolidated, priority air

movement. Consequently, the overall cost far exceeds the $8.00 charge and this cost-charge imbalance has existed for many years with the result that REA has been operating at a loss on such services.

Muzak has not submitted any facts to substantiate that the proposed rates will "injure the economic structure pursuant to which Muzak and its various independent franchises conduct their business", or "would place the entire Muzak organization at a competitive disadvantage...".

Air Express, the premium non-consolidating, priority air movement should not be required to continue to serve Muzak at unrealistically low rate levels.

On the basis of a 43 pound shipment, here is how proposed Air Express all-inclusive charges compare with the charges of two air freight forwarders serving the same markets:

	Air Express	Emery Air	Pu/Del.		Total	Airborne Air	Pu/Del.		Total
	$	$	$	$	$	$	$	$	$
Boston-Albany	13.36	16.29	1.35/	1.35	18.99	18.55	2.50/	2.00	23.05
Albany-Syracuse	13.36	16.29	1.35/	1.35	18.99	18.55	2.00/	2.00	22.55
Syracuse-Rochester	13.36	16.29	1.35/	1.35	18.99	18.55	2.00/	2.00	22.55
Rochester-Buffalo	13.36	16.29	1.35/	1.35	18.99	18.55	2.00/	3.15	23.70
Buffalo-Fitchburg	14.21	16.29	1.35/	4.75	22.39	18.55	3.15/	3.75	25.45
	$67.65				$98.35				$117.30

THE COMPLAINT OF AIR FREIGHT FORWARDERS ASSOCIATION

AFFA's Complaint suggests that "rate fixing" here by the airline industry and "a plan to offer a substantially expanded and new competitive service in markets already served by forwarders through a chosen monopolistic instrument" are both per se violations of the antitrust laws.*

Air Express service operates under two agreements, i.e., "Agreement Among Certain Air Carriers Relating To Air Express Service", Agreement C.A.B. No. 12866, and "Air Express Agreement Between REA Express and Certain Air Carriers", Agreement C.A.B. No. 17935, both of which have been approved by the Civil Aeronautics Board pursuant to Sections 412 and 414 of the Federal Aviation Act. (C.A.B. Order Nos. E-13764, E-13944, E-18207, E-23066, 69-2-94, E-22271, 69-11-130 and 70-7-39) Agreement C.A.B. No. 17935, Article VI, Air Express Rates reads in part as follows:

> "The Joint Committee shall determine conditions of carriage and other rules and the rates to be charged the public for air express service, such rules and rates to be published in tariffs participated in by both R E A Express and the Air Carriers, subject to the provisions of the Air Carrier(s) "Official Air Transport Restricted Articles Tariff" and to applicable state or Federal laws now or hereafter in effect and to regulations by such federal and state authorities as may have jurisdiction in the premises."

Thus, any needed antitrust immunity has been granted.

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* Pages 3 and 4

Further, Agreement C.A.B. No. 17935 covers "the transportation of property between points in the United States or between points in the United States and Puerto Rico or between a point in the United States and a point in Canada"; thus there is no limitation as to markets in the named territories.

THE TAX AND THE RATE COMPARISONS

The Complaint* erroneously indicates a failure of REA to consider the 5 percent tax. On the contrary, the proposed tariff pages, like the ones they cancel, are subject to Section 15, Additional Charge Table, of Official Air Express Tariff No. 1, C.A.B. No. 1, which is designed to cover the tax. Thus, the amount of this tax will be added to each of the proposed charges, and, therefore, the rate and REA revenue share comparisons set forth in the Complaint are in error to the extent that they compare tax-included rates with air express tax-excluded rates.

The Complaint** states "REA and the Airlines have not even employed for comparison purposes in their own Exhibit 3 the correct forwarder rates...".

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* Page 12

** Pages 12-13

Our rate comparisons in the June 25 Statement used the forwarders' current rates. We have no way of knowing whether forwarders' proposed rates will become effective or what changes might be made in the forwarders' tariffs.

DIVISIONS

The Complaint questions the divisions negotiated between the Airlines and REA.* Divisions are a proper concern of the parties to the Air Express Agreement but not a proper concern of air freight forwarders.

As to the proposed division, the Statement filed with the tariff states:

> "REA will receive as its share of the revenue a relatively constant dollar amount, regardless of the length of haul. The airline revenue, on the other hand, is based on a ton mile yield, subject to a minimum return of $2.50 per shipment. The effect of this is to give REA a relatively high percentage of the revenues on short haul and small sized shipments, where terminal and shipment costs account for a high percentage of the total costs, and to give the airlines a higher percentage of the revenues on large volume and longer haul movements where flight costs represent a higher proportion of the total costs."

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* See Pages 9-14

At page 8, the Complaint erroneously calculates extraordinary payment from the airlines to REA at $4.5 million. The total payment was $3 million. This extraordinary "arbitrary" was part of a previous extension of the agreement and no such "arbitraries" are provided for in the proposed extension.

REDUCTION OF REA SERVICES

The Complaint at page 4, alleges "substantial" reductions of REA's services and operations. There have been consolidations of services in small towns to increase efficiency of the surface services.

There has been no reduction of airport offices or points served in air express. As a matter of fact, one of the major differences in air express operations and air freight forwarder operations is that under the Air Express Agreement, air express service must be provided at all certificated airline points whereas the air freight forwarder may serve only those points he wishes.

OTHER

The Complaint filed by the Air Freight Forwarders Association contains many statements, contentions, allegations and speculations. We have addressed ourselves specifically to several of them in this Reply and anticipated others in our Statements of Justification filed with the tariff. Although we have not treated certain other statements, contentions, allegations and speculations set forth in said Complaint, we hereby deny their validity.

CONCLUSION

Unlike the Muzak pleading that the new rates are too high, the air freight forwarders' Complaint contends that the rates are too low. Although phrased in terms of the public interest, the gist of the Complaint is that a more realistic tariff structure for Air Express will no longer permit air freight forwarders to enjoy a more favorable marketing position than REA Express. The forwarders thus attempt to use the device of protesting a tariff to create a barrier to effective participation in the higher weight, longer haul, air shipment market. This clearly is not consonant with the objectives of the Federal Aviation

Act of 1958. And, of course, the public interest is not served by confining air express to a limited class of lower weight, shorter haul traffic.

Both the Complainant and Muzak are asking the Board to equate the public interest to their individual business interests. But the public interest is best served by realistic rates and a healthy degree of air shipping service competition in order to permit the shipping public to enjoy wider choice of services and rate options. Approval of the proposed tariff will broaden that choice, and will contribute to and stimulate the growth of air cargo.

Respectfully submitted,

G. T. Miano

G. T. Miano
Agent

July 16, 1970

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Reply on Muzak, a Division of Wrather Corporation, and on Air Freight Forwarders Association, by mailing a copy thereof to each such party or its attorney in a properly-addressed envelope with postage prepaid.

Louise M. Gosselin

Louise M. Gosselin

July 16, 1970

REPLY BY REA EXPRESS, INC. AND PARTICIPATING AIRLINES
BEFORE THE

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

DOCKET NO. 22352

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THE MUZAK PLEADING

The Muzak pleading selects one rate comparison -- apparently Scales 1 and 2 at 43 pounds - - and proceeds with general allegations of unlawfulness. So the one shipper protest is confined to one scale and one weight, while asking for suspension and investigation of the entire tariff filing. The pleading does not examine the entire tariff, or the various reductions, or the aspects of the adjustment which are favorable to shippers.

As noted in the Statement submitted with the tariff filing, the reformation of rates is "in a direction consistent with the cost of providing express service". The matter of survival of the express service desired by such shippers as Muzak makes it imperative that major efforts be made to put all shipments on a paying basis.

Using the May 28, 1970 charge of $8.00 as an example, how can anyone suggest that a 43 pound shipment (the usual weight of a Muzak tape shipment) can be given expedited pickup, expedited handling to an airport, expedited handling from an airport and expedited delivery to consignee for a total of $8.00? In these days of high wages and high overall costs the ground handling alone would cost more than $8.00. In addition, the air express service also provides expedited, non-consolidated, priority air

movement. Consequently, the overall cost far exceeds the $8.00 charge and this cost-charge imbalance has existed for many years with the result that REA has been operating at a loss on such services.

Muzak has not submitted any facts to substantiate that the proposed rates will "injure the economic structure pursuant to which Muzak and its various independent franchises conduct their business", or "would place the entire Muzak organization at a competitive disadvantage...".

Air Express, the premium non-consolidating, priority air movement should not be required to continue to serve Muzak at unrealistically low rate levels.

On the basis of a 43 pound shipment, here is how proposed Air Express all-inclusive charges compare with the charges of two air freight forwarders serving the same markets:

	Air Express	Emery Air	Pu/Del.		Total	Airborne Air	Pu/Del.		Total
	$	$	$		$	$	$		$
Boston-Albany	13.36	16.29	1.35/	1.35	18.99	18.55	2.50/	2.00	23.05
Albany-Syracuse	13.36	16.29	1.35/	1.35	18.99	18.55	2.00/	2.00	22.55
Syracuse-Rochester	13.36	16.29	1.35/	1.35	18.99	18.55	2.00/	2.00	22.55
Rochester-Buffalo	13.36	16.29	1.35/	1.35	18.99	18.55	2.00/	3.15	23.70
Buffalo-Fitchburg	14.21	16.29	1.35/	4.75	22.39	18.55	3.15/	3.75	25.45
	$67.65				$98.35				$117.30

THE COMPLAINT OF AIR FREIGHT FORWARDERS ASSOCIATION

AFFA's Complaint suggests that "rate fixing" here by the airline industry and "a plan to offer a substantially expanded and new competitive service in markets already served by forwarders through a chosen monopolistic instrument" are both per se violations of the antitrust laws.*

Air Express service operates under two agreements, i.e., "Agreement Among Certain Air Carriers Relating To Air Express Service", Agreement C.A.B. No. 12866, and "Air Express Agreement Between REA Express and Certain Air Carriers", Agreement C.A.B. No. 17935, both of which have been approved by the Civil Aeronautics Board pursuant to Sections 412 and 414 of the Federal Aviation Act. (C.A.B. Order Nos. E-13764, E-13944, E-18207, E-23066, 69-2-94, E-22271, 69-11-130 and 70-7-39) Agreement C.A.B. No. 17935, Article VI, Air Express Rates reads in part as follows:

> "The Joint Committee shall determine conditions of carriage and other rules and the rates to be charged the public for air express service, such rules and rates to be published in tariffs participated in by both R E A Express and the Air Carriers, subject to the provisions of the Air Carrier(s) "Official Air Transport Restricted Articles Tariff" and to applicable state or Federal laws now or hereafter in effect and to regulations by such federal and state authorities as may have jurisdiction in the premises."

Thus, any needed antitrust immunity has been granted.

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* Pages 3 and 4

Further, Agreement C.A.B. No. 17935 covers "the transportation of property between points in the United States or between points in the United States and Puerto Rico or between a point in the United States and a point in Canada"; thus there is no limitation as to markets in the named territories.

THE TAX AND THE RATE COMPARISONS

The Complaint* erroneously indicates a failure of REA to consider the 5 percent tax. On the contrary, the proposed tariff pages, like the ones they cancel, are subject to Section 15, Additional Charge Table, of Official Air Express Tariff No. 1, C.A.B. No. 1, which is designed to cover the tax. Thus, the amount of this tax will be added to each of the proposed charges, and, therefore, the rate and REA revenue share comparisons set forth in the Complaint are in error to the extent that they compare tax-included rates with air express tax-excluded rates.

The Complaint** states "REA and the Airlines have not even employed for comparison purposes in their own Exhibit 3 the correct forwarder rates...".

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* Page 12

** Pages 12-13

Our rate comparisons in the June 25 Statement used the forwarders' current rates. We have no way of knowing whether forwarders' proposed rates will become effective or what changes might be made in the forwarders' tariffs.

DIVISIONS

The Complaint questions the divisions negotiated between the Airlines and REA.* Divisions are a proper concern of the parties to the Air Express Agreement but not a proper concern of air freight forwarders.

As to the proposed division, the Statement filed with the tariff states:

> "REA will receive as its share of the revenue a relatively constant dollar amount, regardless of the length of haul. The airline revenue, on the other hand, is based on a ton mile yield, subject to a minimum return of $2.50 per shipment. The effect of this is to give REA a relatively high percentage of the revenues on short haul and small sized shipments, where terminal and shipment costs account for a high percentage of the total costs, and to give the airlines a higher percentage of the revenues on large volume and longer haul movements where flight costs represent a higher proportion of the total costs."

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* See Pages 9-14

At page 8, the Complaint erroneously calculates extraordinary payment from the airlines to REA at $4.5 million. The total payment was $3 million. This extraordinary "arbitrary" was part of a previous extension of the agreement and no such "arbitraries" are provided for in the proposed extension.

REDUCTION OF REA SERVICES

The Complaint at page 4, alleges "substantial" reductions of REA's services and operations. There have been consolidations of services in small towns to increase efficiency of the surface services.

There has been no reduction of airport offices or points served in air express. As a matter of fact, one of the major differences in air express operations and air freight forwarder operations is that under the Air Express Agreement, air express service must be provided at all certificated airline points whereas the air freight forwarder may serve only those points he wishes.

OTHER

The Complaint filed by the Air Freight Forwarders Association contains many statements, contentions, allegations and speculations. We have addressed ourselves specifically to several of them in this Reply and anticipated others in our Statements of Justification filed with the tariff. Although we have not treated certain other statements, contentions, allegations and speculations set forth in said Complaint, we hereby deny their validity.

CONCLUSION

Unlike the Muzak pleading that the new rates are too high, the air freight forwarders' Complaint contends that the rates are too low. Although phrased in terms of the public interest, the gist of the Complaint is that a more realistic tariff structure for Air Express will no longer permit air freight forwarders to enjoy a more favorable marketing position than REA Express. The forwarders thus attempt to use the device of protesting a tariff to create a barrier to effective participation in the higher weight, longer haul, air shipment market. This clearly is not consonant with the objectives of the Federal Aviation

Act of 1958. And, of course, the public interest is not served by confining air express to a limited class of lower weight, shorter haul traffic.

Both the Complainant and Muzak are asking the Board to equate the public interest to their individual business interests. But the public interest is best served by realistic rates and a healthy degree of air shipping service competition in order to permit the shipping public to enjoy wider choice of services and rate options. Approval of the proposed tariff will broaden that choice, and will contribute to and stimulate the growth of air cargo.

Respectfully submitted,

G. T. Miano

G. T. Miano
Agent

July 16, 1970

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Reply on Muzak, a Division of Wrather Corporation, and on Air Freight Forwarders Association, by mailing a copy thereof to each such party or its attorney in a properly-addressed envelope with postage prepaid.

Louise M. Gosselin

Louise M. Gosselin

July 16, 1970

Order 70-7-109

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.
Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 23rd day of July, 1970

Revisions in air express rates and charges proposed by RAILWAY EXPRESS AGENCY, INCORPORATED AND PARTICIPATING AIR CARRIERS	Docket 22387

ORDER OF INVESTIGATION AND SUSPENSION

By tariff revisions filed June 25 and marked to become effective July 27, 1970, Railway Express Agency, Incorporated (REA) and air carriers participating in the tariffs with REA propose to revise the structure of air express rates and charges in the United States and between the United States and Canada. The proposal involves increasing the minimum charge from $8.00 to $8.50 per shipment under both general and most specific commodity rates. It also involves significant revisions in general commodity rates, both increases and decreases. The increases would typically affect the rates for relatively small shipments and short hauls while rates for larger shipments and longer hauls would be reduced.

Complaints requesting investigation and suspension were submitted by Muzak, a Division of Wrather Corporation (Muzak), and by the Air Freight Forwarders Association, representing nine member forwarders (AFFA). Muzak's complaint protests the increases in rates proposed, and claims that, without REA's services at reasonable rates, Muzak would suffer serious and irreparable injury.

AFFA protests the rate reductions proposed, inter alia, on the grounds that the proposals would eliminate air freight forwarder participation in the "historic" forwarder markets, that the proposed rates would involve destructive competition since they would be below the apparent total cost of the service, that REA's returns would be below its own costs, and that the reduced rates would be maintained through the revenues gained from sharp rate increases proposed in the short-haul, small-shipment markets and through the airlines' subsidy of REA in these markets. The

complaint also asserts that the proposal would place REA in the forwarding business without re-examination of the statutory and policy problems involved, such as REA's monopoly "priority" in airlift not available to independent forwarders.

In support of their filings and in answer to the complaints, REA and the participating airlines variously assert, among other things, that (1) the proposed rates will reflect changes consistent with operating costs for both REA and the airlines, (2) the reduced rates for long-haul shipments will be responsive to the Board's expressed desires to have such rates more nearly reflect operating costs, (3) the revenues to REA will cover no more than costs plus a fair return, considering the sharp inflation that has occurred in labor and other costs, (4) the cost justification presented by REA actually understates its actual costs, (5) the airlines' revenues from express traffic have not kept pace with cost increases, (6) the airlines' express revenues per ton-mile reflect the value of priority service for express shipments and higher airline costs of rendering such service, (7) that the forwarders' complaint contains certain factual errors, and (8) the airlines' revenues from express must be evaluated in the light of the circuitous mileage actually flown and the interline handling required by many express shipments.

Upon consideration of all relevant factors, the Board finds that the proposals listed in Appendix A may be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and should be investigated. Furthermore, to the extent that the tariff provisions would apply to shipments within the United States, the tariff provisions should be suspended pending investigation.

The proposed revisions involve both significant increases and decreases in costs to the public but we do not believe that they have been adequately justified. The minimum air express charge for both general and specific commodity rated air express shipments would rise from $8.00 to $8.50 per shipment. It should be noted, however, that REA filed its $8.00 minimum charge effective May 28, 1970, representing an increase from $6.00 per shipment. Thus, the proposed minimum charge represents an increase of almost 42 percent above the charge in effect approximately two months ago. It should be noted, furthermore, that the $6.00 minimum charge has been in effect only since June 18, 1969, while the prior charge was $5.50, which in turn had been in effect less than three years. Previously, the charge was $4.70.

REA's proposed increases in general commodity rates involve increases for small shipments, especially in markets involving short hauls. For markets below 250 miles the increases would be as much as 85 percent over current levels. For the foregoing markets, the rates proposed will involve

increases by as much as 138 percent above the rates quoted prior to May 28, 1970. For the longer hauls and larger shipments, reductions are proposed as high as 24 percent. The forwarders, in their complaints, claim that those reductions will threaten their existence.

In the current air express rate structure, rates are published for each pound of shipment weight for various lengths of haul up to 100 pounds, with larger shipments rated on the basis of the 100-pound rate. The proposal would involve lower rates per pound for larger shipments in 10-pound groups up to and including 300 pounds. The proposed revisions would make REA more competitive in the larger shipment market and raise certain fundamental questions of great import to both forwarders and the general public.

We are of the opinion that the justifications presented by REA and the airlines are not adequate to support the proposed rate structure. REA, for example, includes a return element based upon an operating ratio of 90 percent. The use of an operating ratio to calculate the earnings element has not been accepted by the Board, which has generally considered that the appropriate method of computing earnings element is in terms of a return on investment capital. An investigation would be a proper vehicle to determine the appropriate rate of return on investment and other costs presented by REA, including the allowance made for inflation.

We shall also suspend, pending investigation, the increase proposed in the excess value rate from 18 cents to 30 cents per $100.00 of excess valuation. Excess valuation declarations apply to the value of the shipment above 50 cents per pound or $50.00 per shipment, which is the assumed liability of REA and the airlines for loss or damage and which is covered by the basic air express charges. Airlines typically charge 10 cents per $100.00 of excess valuation, while most forwarders charge 10 or 15 cents. The Board does not believe that the charges should exceed the costs of the additional coverage. No support has been advanced for this proposed increase and accordingly this proposal will be suspended pending investigation.

The tariff rates must be reasonably related to the total costs of the service, embracing those of the direct air carriers as well as those of REA. In order to assure that the rates and charges cover the costs and a reasonable profit element to both the direct air carriers and to REA but not in excess thereof, it will be necessary that the investigation be directed to both the rates and charges proposed and the divisions of such rates and charges between the air carriers and REA.1/

1/ By Order 70-7-110, issued concurrently herewith, action on the Air Express Agreement C.A.B. 17935 A5 is deferred. This action of deferral, however, should not be construed as deferring action on the investigation of the rates and charges or of the divisions thereof.

Accordingly, pursuant to provisions of the Federal Aviation Act of 1958,

IT IS ORDERED THAT:

1. An investigation is instituted to determine whether the rates, minimum charges, and provisions described in Appendix A attached hereto, and rules, regulations, and practices affecting such rates, minimum charges, and provisions, are or will be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and if found to be unlawful, to determine and prescribe the lawful rates, minimum charges, and provisions, and rules, regulations, or practices affecting such rates, minimum charges, and provisions;

2. Pending hearing and decision by the Board, the rates, minimum charges, and provisions described in Appendix A attached hereto (except rates, minimum charges, and provisions applying to or from Canadian points) are suspended and their use deferred to and including October 24, 1970, unless otherwise ordered by the Board, and that no changes be made therein during the period of suspension except by order or special permission of the Board;

3. The scope of the investigation instituted by ordering paragraph 1 above shall include the issue as to whether the divisions of the rates and charges described in Appendix A are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the Railway Express Agency, Inc. and the air carriers and foreign air carriers parties thereto, and if so, to prescribe the just, reasonable, and equitable divisions thereof to be received by the several air carriers.

4. The complaints of the Air Freight Forwarders Association, in Docket 22352, and Muzak, a Division of Wrather Corporation, in Docket 22347, are hereby dismissed except to the extent granted herein;

5. The proceeding herein be assigned for hearing before an examiner of the Board at a time and place hereafter to be designated; and

6. A copy of this order shall be filed with the tariffs and served upon the carriers listed in Appendix B, which are hereby made parties to this proceeding.

This order will be published in the Federal Register.

By the Civil Aeronautics Board:

HARRY J. ZINK

Secretary

(SEAL)

TARIFF C.A.B. NO. 1 ISSUED BY G. T. MIANO, AGENT:

The charges and provisions in RULE NO. 8(A) on 7th Revised Page 7.

The charges and provisions in RULE NO. 8(B) on 7th Revised Page 8.

The charges and provisions in RULE NO. 20 on 17th Revised Page 16.

All rates, charges, and provisions on the following pages (except those bearing the reference mark which denotes no change or those which are made subject to provisions which specifically state that no change has been made therein):

15th Revised Page 122
Original Page 122-A
Original Page 122-B
12th Revised Page 123
12th Revised Page 124
Original Page 124-A
Original Page 124-B
13th Revised Page 125
13th Revised Page 126
12th Revised Page 128
11th Revised Page 129
8th Revised Page 129-A
6th Revised Page 129-B
Original Page 129-C
Original Page 129-D
8th Revised Page 141-A
7th Revised Page 141-B
10th Revised Page 142
7th Revised Page 143-A
6th Revised Page 143-C
7th Revised Page 143-E
5th Revised Page 143-G

The minimum charges per shipment and the provisions applicable thereto on the following pages:

19th Revised Page 145
11th Revised Page 150
8th Revised Page 151
7th Revised Page 152
10th Revised Page 153

On 20th Revised Page 145, 12th Revised Page 150 and 9th Revised Page 151:

(a) The minimum charges per shipment subject to the encircled reference mark 2, and the provisions applicable thereto; and

(b) The reference mark "#" and the provisions in the explanation thereof.

TARIFF C.A.B. NO. 1 ISSUED BY G. T. MIANO, AGENT Continued:

The provisions on the tariff pages specified above in this appendix and on the following tariff page insofar as such provisions cancel rates which are proposed to be superseded by the suspended rates and insofar as such provisions cancel suspended rates or provisions:

12th Revised Page 127

Appendix B

Air Canada
Airlift International, Inc.
Air West, Inc.
Alaska Airlines, Inc.
Allegheny Airlines, Inc.
American Airlines, Inc.
Aspen Airways, Inc.
Braniff Airways, Inc.
Caribbean-Atlantic Airlines, Inc.
Compagnie Nationale Air France
Continental Air Lines, Inc.
Delta Air Lines, Inc.
Eastern Air Lines, Inc.
Frontier Airlines, Inc.
Los Angeles Airways, Inc.
Mohawk Airlines, Inc.
National Airlines, Inc.
New York Airways, Inc.
North Central Airlines, Inc.
Northeast Airlines, Inc.
Northwest Airlines, Inc. (Also operating as Northwest Orient Air Lines)
Ozark Air Lines, Inc.
Pan American World Airways, Inc.
Piedmont Aviation, Inc.
Railway Express Agency, Incorporated
San Francisco & Oakland Helicopter Airlines, Inc.
Seaboard World Airlines, Inc.
Southern Airways, Inc.
Texas International Airlines, Inc.
The Flying Tiger Line Inc.
Trans Caribbean Airways, Inc.
Trans World Airlines, Inc.
United Air Lines, Inc.
Western Air Lines, Inc.

Air Express service provided hereunder is performed by the participating carriers pursuant to an Agreement which has been filed with and approved by the Civil Aeronautics Board.

Source: 14th revised page 4 of Agent G. T. Miano's C.A.B. No. 1.

Effective December 5, 1969

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Order 70-7-110

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 23rd day of July, 1970

PETITION AND COMPLAINT OF REA EXPRESS, INC.	Docket 22096
Agreement filed pursuant to section 412 of the Federal Aviation Act of 1958, as amended, between: ALLEGHENY AIRLINES, INC., CERTAIN OTHER AIR CARRIERS, FOREIGN AIR CARRIERS, AND RAILWAY EXPRESS AGENCY, INC. relating to air express service.	Agreement CAB 17935-A5
EXPRESS SERVICE INVESTIGATION	Docket 22388

ORDER DEFERRING ACTION ON AGREEMENT
AND INSTITUTING INVESTIGATION

On June 25, 1970, the parties 1/ to the air express agreement filed

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1/ Air Canada
Airlift International, Inc.
Air West, Inc.
Alaska Airlines, Inc.
Allegheny Airlines, Inc.
American Airlines, Inc.
Aspen Airways, Inc.
Braniff Airways, Inc.
Caribbean-Atlantic Airlines, Inc.
Compagnie Nationale Air France
Continental Air Lines, Inc.
Delta Air Lines, Inc.
Eastern Air Lines, Inc.
The Flying Tiger Line Inc.
Frontier Airlines, Inc.
Los Angeles Airways, Inc.
Mohawk Airlines, Inc.
National Airlines, Inc.
New York Airways, Inc.
North Central Airlines, Inc.
Northeast Airlines, Inc.
Northwest Airlines, Inc.
Ozark Air Lines, Inc.
Pan American World Airways, Inc.
Piedmont Aviation, Inc.
San Francisco and Oakland Helicopter Airlines, Inc.
Seaboard World Airlines, Inc.
Southern Airways, Inc.
Texas International Airlines, Inc.
Trans Caribbean Airways, Inc.
Trans World Airlines, Inc.
United Air Lines, Inc.
Western Air Lines, Inc.
REA Express, Inc.

pursuant to section 412 of the Act a further amendment to that agreement. 2/ On the same date the parties filed a new air express tariff, to become effective July 27, 1970. The effectiveness of the amended agreement is tied to that of the proposed tariff and will become effective on the same date that the tariff becomes effective. The agreement will terminate at midnight, June 30, 1971.

The amended agreement establishes a new formula for the division of gross air express revenues, and places greater responsibility on the airlines for the movement of air express where substitute service is necessary because of unavailable, inadequate, or interrupted air transportation, and for loss and damage claims.

During the past year revenues were divided on the basis of a formula allowing REA approximately 59 percent and the airlines 41 percent. The new division of revenue appended to the agreement changes this percentage division. REA will receive as its share of the revenues a relatively constant dollar amount, regardless of length of haul. The airline revenue, on the other hand, is based on a ton-mile yield, subject to a minimum return of $2.50 per shipment. The effect of this is to give REA a relatively high percentage of the revenues on short-haul and small-sized shipments where terminal and shipment costs account for a high percentage of the total costs, and to give the airlines a higher percentage of the revenues on large-volume and longer-haul movements where flight costs represent a higher proportion of the total costs. In the overall, REA will receive approximately 65 percent of gross air express revenues and the airlines 35 percent.

Comments opposing the amended agreement and the tariff to which it is keyed were filed by the Air Freight Forwarders Association (AFFA), to which REA filed an answer.

Upon consideration thereof, the Board has decided to defer taking action on Agreement CAB 17935-A5. We would be disposed to approve the concepts embodied in Agreement CAB 17935-A5. However, the division of revenue provisions of that agreement are keyed, in specific dollar terms, to the provision of the express tariff contemporaneously filed by REA. As noted in Order 70-7-109, issued concurrently herewith, we are suspending that tariff and setting it

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2/ Under amendments approved by Order 69-11-130, November 26, 1969, and Order 70-7-39, dated July 8, 1970, the present air express agreement is in effect until July 31, 1970.

for investigation. In such circumstances it would serve no useful purpose to approve the amended express agreement now before us. Instead we shall defer acting on Agreement CAB 17935-A5, and invite the parties either to agree to extend the existing agreement pending the outcome of the Express Service Investigation, infra, or to embody in an amended agreement their new revenue division formula in terms of the existing express tariff. In either event, by so acting the parties' action will allow the continuation of the air express service during the time in which the Board and the parties will be exploring the longer-range future of this service in the Express Service Investigation.

It has been some time since the Board explored the role of REA Express in the national air transportation network. This was last done in the Airfreight Forwarder Investigation decided in 1955, 3/ where the Board agreed generally with the Examiner's conclusion that despite its monopoly of the air express business no change in its status was warranted. 4/ Thus, we believe with this passage of time a formal review of REA's role in the movement of air express, as well as the current relationships between REA and the direct air carriers, is required by the public interest. Therefore, the Board has decided to institute an investigation to determine what the future role in air transportation should be with regard to express or priority type cargo service, and what Board action should be taken with regard thereto, including but not limited to (a) whether the public convenience and necessity require the alteration, amendment, or modification of the certificates of the scheduled air carriers to authorize the provision by the certificated scheduled airlines of a distinct class of priority cargo service (such as air express) either directly or indirectly by the airlines or through indirect air carriers, or both; (b) whether licenses for such air express service should be issued to one or more indirect air carriers (such as REA or air freight forwarders) to conduct such service independently of any joint agreement with the airlines; and (c) whether the existing concept of an air express agreement between the direct air carriers and an air express company should be maintained.

3/ 21 CAB 536.

4/ REA now operates pursuant to an individual exemption from section 401(a) of the Act last modified by Order E-22273, June 4, 1965. Such exemption by its terms is tied to the air express agreement with the airlines herein discussed.

We conceive this investigation to be broad in scope, and that it will explore such underlying questions, inter alia, as whether the service currently being provided by REA is actually an express or priority service differentiated from other airfreight services; whether such a priority service is susceptible of actually being provided--by REA or by anybody else; whether there is a need for separate express service; who, if anybody, should provide such service; whether the direct air carriers should establish a special tariff (and corresponding special service) for express traffic; whether such a tariff should be available to any shipper, or just to the authorized express company; and depending on how such issues are resolved, whether REA should be granted authorization under Part 296 of our Economic Regulations (14 CFR 296) to be a domestic airfreight forwarder, and whether the Board should terminate its approval of Agreement CAB 12866. 5/

Concurrently herewith we are instituting an investigation to determine the lawfulness of the new express tariff filed by REA and the carriers. 6/ The issues to be tried therein, and those to be determined herein, encompass in broader scope many of the matters raised by REA in its Petition and Complaint in Docket 22096. We shall, therefore, dismiss REA's Petition and Complaint in Docket 22096, without prejudice to any subsequent filing by REA with respect to matters not within the scope of the investigations referred to above.

ACCORDINGLY, IT IS ORDERED THAT:

1. Action on Agreement CAB 17935-A5 be and it hereby is deferred;

2. An investigation, to be known as Express Service Investigation, be instituted for the purpose of exploring the future role of express or priority cargo service in air transportation, and what Board action should be taken with regard thereto, including, but not limited to:

5/ Agreement among certain air carriers relating to Air Express Service, approved in Order E-13764, April 21, 1959, as modified by Order E-13944, May 28, 1959.

6/ Order 70-7-109, July 23, 1970, Docket 22387.

(a) Whether the public convenience and necessity require alteration, amendment or modification of the certificates of the scheduled air carriers to authorize the provision by the scheduled certificated airlines of a distinct class of priority cargo service (such as air express) either directly by the airlines or through indirect air carriers, or both;

(b) Whether licenses for such express service should be issued to one or more indirect air carriers (such as REA or air freight forwarders) to conduct such service independently of any joint agreement with the airlines; and

(c) Whether the existing concept of an air express agreement between the direct air carriers and an express company should be maintained;

3. All parties to the Air Express Agreement between REA Express and Certain Air Carriers, Agreement CAB 17935, as amended, and the Air Freight Forwarders Association be and they hereby are made parties to this proceeding, and will be served with a copy of this order;

4. This proceeding be set down for hearing before an Examiner of the Board at a time and place hereafter to be designated, and will be assigned Docket 22388;

5. Motions to consolidate applications herewith be filed within 30 days after the date of this order; and

6. The Petition and Complaint of REA Express in Docket 22096 be and it hereby is dismissed.

This order will be served on the Post Office Department and on the Departments of Defense, Justice, and Transportation, and will be published in the Federal Register.

By the Civil Aeronautics Board:

HARRY J. ZINK

Secretary

(SEAL)

BEFORE THE CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Revisions in Air Express rates and charges proposed by REA EXPRESS, INC. AND PARTICIPATING AIR CARRIERS	Docket 22387
PETITION AND COMPLAINT OF REA EXPRESS, INC.	Docket 22096

PETITION FOR RECONSIDERATION

REA Express, Inc. hereby petitions the Board (i) to reconsider and vacate its suspension of the Air Express tariff revisions filed June 25, to be effective July 27, 1970 or, (ii) in the alternative, to reconsider and vacate its dismissal of REA's Petition and Complaint dated April 9, 1970 and grant the relief requested therein.

I

In a motion filed concurrently herewith REA has moved the Board to waive the page limitation in Section 302.37 (b) of the Board's Rules of Practice and accept over two hundred communications, requested by REA, from prominent

shippers all over the United States supporting the new Air Express tariff and asking that the Board's order suspending it be vacated (Order 70-7-109).

The letters support both the increases and the decreases in the tariff. They also testify eloquently to their urgent need for Air Express and allay any doubts which the Board may have had on that subject. These letters indicate the extent of shipper support for the tariff which is information that was not available to the Board at the time the tariff with its justification was originally filed. Coming as they do from shippers who are themselves actually willing to pay more money in order to see Air Express service survive, we think they are entitled to the utmost consideration.

II

Having lost $50,000,000 in the last twenty-four months, REA is running out of time and money. The Board's suspension of the new Air Express tariff (Order 70-7-109) places REA Express and its transportation services throughout the nation in the most perilous position yet experienced.

REA's losses are lessening as a result of heroic cost-cutting efforts. For the fiscal year ended June 30, 1970,

the loss was $7,700,000 despite an economic recession, compared with $43,000,000 the year before. However, REA cannot long continue in business under the old Air Express tariff which only perpetuates its losses. Without earnings, there is no way that REA can cure its financial problems.

The statement of Tariff Justification and Supporting Data filed by REA in connection with the emergency increase in the Air Express minimum effective May 28, 1970, shows that even with that increase REA would have an annual loss of approximately $600,000 not including provision for several million dollars of labor and other cost increases which would take effect in the near future, or for the effects of continued inflation (p.3).

Since filing the suspended tariff, REA's most recent fiscal year closed (June 30). Year-end accounting reveals that data presented to the Board in the Statement of Justification for the tariff overstated the profit possible under the new tariff. The most recent data reveal that the ratio of air to surface shipments if 38.5 percent to 61.5 percent respectively, the effect of which is to increase the projected costs allocable to air by $949,000 on an annual basis. Moreover, additional elements of post

July 1, 1970 costs which were not previously available for presentation to the Board can be more firmly assessed. These additional costs aggregate $3,685,200 over the next twelve months. With the increase incosts allocable to air, the total is $4,634,200. These increased costs, and other adjustments set forth in detail in Appendix A, result in projected profit to REA of only $2,003,800 - barely twenty cents per shipment -- if the tariff goes into effect. While these figures are based on 1969 Air Express traffic, without actual experience under the new tariff it is impossible for REA to make a meaningful estimate of to what extent traffic diversions under the increased rates applicable to most of the traffic will be offset by traffic generated by lower long haul rates. A profit of twenty cents per shipment is indeed a modest amount when compared with the air freight forwarders figures in Exhibit 4 of the AFFA Complaint. Without increased revenues sufficient to cover costs and permit REA to turn a profit on Air Express, this company will soon be out of business. 1/

1/ REA also has not been inattentive to the problem of rising costs in surface express. Since January 1, 1969, increases in surface express rates have totaled approximately fifteen percent.

III

But more is involved in the new Air Express tariff than the need to eliminate losses. The tariff changes represent an attempt to reform a tariff which for years has stunted and twisted the growth of Air Express, made its operation uneconomical, and contained rates wholly out of phase with the costs involved.

When viewed in isolation, the changes in the new tariff might appear to be striking. However, it is not appropriate to test the validity of the reformed tariff by comparing it to its own pre-reform shape. For when viewed in the context of other tariffs which the Board has permitted to become effective, it is evident that the tariff changes correct long-standing aberrations to permit it to fit better with existing tariff structures..

IV

The increase in the minimum charge is an example. In its order of suspension, the Board focused specifically on the fifty-cent increase in the minimum charge. The Board maintained that the proposed new minimum charge represents a great increase over previous charges going back to the $4.70 minimum charge of several years ago (Order 70-7-109,p.2).

With all respect to the Board, REA finds this approach astonishing. First, while wide publicity was given the tariff filing, only a single shipper out of REA's hundreds of thousands of Air Express shippers protested any aspect of the tariff. Second, the proposed minimums are still substantially below all the minimums charged by air freight forwarders and accepted by the Board.[1/] In some instances Air Express minimums are even below motor common carrier minimums for surface freight (Appendix C). Third, as a matter of fact, the cumulative increase in the minimum from 1957 -- thirteen years ago -- through the proposed increases amounted to only thirty-nine cents a year!

The truth is, then, that for many years REA has provided Air Express service for minimum charge shipments at a loss -- and the new minimums are still below those charged by carriers with similar costs. Look, for example, at motor carrier terminal costs as developed by the Interstate Commerce Commission in Appendix D hereof.

Much the same thing may be said for other rates increased in the proposed tariff. These rates have been uneconomically low for far too long. REA cannot survive while it increases them a few pennies at a time to satisfy some mechanistic concept which limits rate changes to an

1/ In fact, the freight forwarders themselves are substantial users of Air Express.

arbitrary percentage. The Air Express tariff has to be adjusted to rectify long-standing inadequacies. This means that in some instances rates are increased by substantial amounts. But they should be. Here again, at those points on the rate scale where the Board objected to the proposed increases, Air Express rates are still below the air freight forwarder rates. (See AFFA Complaint, Exhibit 3, pp. 4, 5, 6, 8, 9, 13).

V

The changes in the longer haul, higher weight rates embody the same rationale of adjusting the new Air Express tariff to the existing air freight tariff structure. While these changes constitute decreases rather than increases, it will be seen that they harmonize the relationship to air freight rates that exists on the lower end of the scale.

Air Express tariffs have always included long haul as well as short haul transportation as shown in the original Air Express Tariff No. 1 issued August 1, 1927. However, REA has not been able to serve long haul shippers effectively in recent years because of an archaic rate structure. The proposed rate reductions are designed to permit long haul shippers the advantages of Air Express service which short haul shippers have long enjoyed. This is an

objective which the Board itself has encouraged. See Order E-23315, p.3.

The shipping public is entitled to Air Express service whatever the distance. Under existing Air Express rates, the percentage of traffic in long hauls is minimal because the penalty price which shippers must pay over other air service on anything above the minimum rate is warranted only in those few instances where the differential over air freight is offset by the urgency attendant upon the movement.

Further, with lower long haul rates, many present shippers of REA's high-rated surface traffic will find it advantageous to use Air Express. Such newly generated traffic will make a material contribution to the problem of excess capacity now plaguing the airlines.

VI

REA is proud of the new tariff which it labored with the airlines so long and hard to achieve. It has no fear of what an investigation of the tariff by the Board will reveal. The question to which this petition is addressed, however, is what should happen in the interim while the tariff is being investigated. Unless the new tariff is allowed to go into effect, this investigation will probably turn out to be an autopsy rather than an examination, for REA will be

finished before the Board is finished.

The gist of the Board's view on this point is simply that it will not risk presenting the forwarders with the possibility of even temporary long haul competition from Air Express until the Board is persuaded otherwise, after a hearing. There is no support for this proposition in the Federal Aviation Act of 1958 nor the Board's published policies, regulations and decisions. In fact, the Board has encouraged greater competition. In the Board's recent statement to the House Commerce Committee, Vice Chairman Gillilland pointed out that "the Board's policy with respect to ... airfreight forwarders ... has been one of permitting maximum competition and opportunity to enter the field in order to provide for the full development of air cargo." (Hearing on H.R. 9227 Before the House Committee on Interstate and Foreign Commerce, 91st Cong., 2d Sess., at 7 (1970).)

What the Board's order rules out is the benefit from having the reformed tariff in effect during the investigation. Further, the advantages of having information generated from actual operation of the tariff before the investigation is completed seems obvious. The only significant complaint is from a few freight forwarders who seek to avoid

competition. Certainly the investigation will examine their claim, but the bare assertion of that claim must be balanced against the interests of the shipping public.

The letters submitted with a motion filed concurrently herewith indicate the degree of enthusiasm which the shippers have for this tariff. To suspend the tariff while it is being investigated would injure their interest, for the very existence of REA and Air Express are put in peril and there is no way they can recover the benefit which they would have enjoyed from the new rates.

Further, the anti-competitive motivation of the freight forwarders has already become all too apparent. As is transparently clear from the AFFA Complaint with its reiterated doubts about the need for Air Express at all and its barely masked threats, the trade association's purpose is to prevent -- and destroy -- competition (pp. 4-6, 13-14). On the other hand, the ability of the freight forwarders to withstand some competition and survive should be viewed in the context of their latest earning reports which show them to be among the few companies in air transportation actually increasing their profits (See Appendix E).

There is no apparent reason why they cannot continue to profit after the new tariff becomes effective. The Board

should not be mislead by the forwarders' comparison of selected rates for single shipments. The forwarders are consolidators. They have the ability to take advantage of airline rates which favor consolidated shipments. Thus, their contentions that they cannot reduce rates and still operate at a profit should not be accepted without the kind of cost analysis which would result from investigation of forwarder rates and costs and related return on investment. Perhaps it is time for a general air freight forwarder rate investigation too.

Nor should the Board be mislead into thinking that the new Air Express rates are in every case lower than rates of all of the forwarders. Appendix B gives examples of some that are higher.

VII

REA believes that the Board's action in suspending the tariff is mistaken not only because of a mis-evaluation of the tariff itself, but also from a failure to evaluate correctly the circumstances leading to its development. Here some background is necessary.

When, after months of negotiation with the airlines failed to produce a satisfactory basis for proceeding with Air Express, REA filed its Petition and Complaint in Docket

22096 on April 9, 1970. The purpose of that proceeding was two-fold. First, to permit it to survive, REA requested interim relief. Second, the Board was asked to address some basic issues in the Air Express arrangement which the parties had been unable to resolve between themselves. At that point the Air Express Agreement -- and with it Air Express service -- were about to terminate. Embargoes were shortly posted by the airlines. The Board took no action on REA's Petition and Complaint. Instead, stressing the importance of continued Air Express service, it called on the parties for an emergency extension of the Air Express Agreement and enjoined them to develop a viable interim arrangement which would permit the Board to address in the context of a broader proceeding the various issues raised by REA in its Petition. After weeks of intensive negotiation, the airlines and REA achieved what the Board asked. The fruit of their labor is reflected in the tariff the Board has just ordered suspended and a revised Air Express Agreement which will not become effective if the suspension continues.

The Board compounded the injury by dismissing REA's request for interim relief in its Petition and Complaint at the same time it suspended the tariff (Order 70-7-110). Thus, at one blow the Board has taken away both of the means

to make Air Express viable in the interim while it investigates the longer range aspects. Therefore, if the new tariff developed with the airlines in lieu of the interim relief requested in the Petition and Complaint is to remain suspended, REA requests that the Petition and Complaint be reinstated so that it will not also be deprived of the opportunity of obtaining the interim relief requested therein.

VIII

No public interest is served by the Board's action. The demise of REA is threatened. The eminently reasonable solution fashioned by the parties is discarded -- a solution which is progressive, wholly lawful and decidedly in the interest of the shipping public. The hundreds of letters from shippers submitted with the Motion made concurrently herewith show strong support for this tariff. If the Board's suspension remains in effect, it will rob these shippers of the advantages of the tariff while the Board completes its investigation, and it will rob REA of the power to survive. This, in turn, will deprive the Board itself of the opportunity to resolve the longer term issues.

IX

Air Express has had a long and honorable history.

The first recorded Air Express shipment was in 1910: a shipment of silk was carried from Columbus, Ohio to Dayton by air. No airlines existed then. It was REA's predecessor, the Express Company, which originated the idea and hired the airplane to provide the transportation.

When the Kelly Air Mail Act of February 2, 1925 authorized contract mail service, the Express Company saw the opportunity to initiate a regular and dependable Air Express service. Between 1925 and 1927 the officers and staff of the Express Company worked continuously on plans looking to the start of a regular Air Express service. The first Air Express tariff was published by the Express Company in 1927. The service was between Boston, New York, Chicago, Dallas, Salt Lake City, Los Angeles, San Francisco, and certain intermediate points.

In fact, REA pioneered <u>all</u> carriage of property by air: the first air freight was not hauled by any airline on its own tariff until 1944.

In view of this history, it comes with bad grace for AFFA to complain that Air Express is intruding on the forwarders' business.

The question raised by the Board for investigation -- "whether there is a need for separate express service"

and AFFA's airy dismissal of the importance of the service -- are best answered by the facts that Air Express carries over 10,000,000 shipments a year and hundreds of thousands of shippers use and depend upon it.

Since control of REA passed from the railroads in 1969, a new, imaginative, dedicated air-minded management team has taken the helm of the company. They have invested in a national advertising program, just starting, which has the promotion of Air Express as one of its most important purposes. This group of outstanding individuals has no incentive to stay with an enterprise bleeding to death, and so hamstrung by regulatory conservatism that the necessary steps to build up a viable future for the company cannot be undertaken.

X

What this really comes down to is a question of how the Board's suspension power is to be used. Suspension strips management of its most significant marketing tool -- the ability to adjust prices. Its exercise takes place before any determination can be made on the merits. But it nonetheless can have major repercussions throughout the entire economy. A power of such dimensions obviously should be

exercised only after the clearest kind of justification has been established.

A balancing of the equities in this case does not establish that kind of justification. They show, on the contrary, that the power of suspension should not be exercised here.

On one hand, there are the contentions of one shipper and nine freight forwarders represented by AFFA. To be weighed against these contentions are the facts that suspension would:

-- place the pioneer company in the transportation of property by air, and its thousands of employees, in serious financial jeopardy;

-- imperil the only intermodal, nationwide small shipments service; and

-- deprive hundreds of thousands of shippers of the benefits of a reformed Air Express tariff while an investigation takes place.

Whatever the Board's doubts may be about "whether there is a need for separate express service," the shippers apparently do not harbor similar doubts. Air Express is the only service that

-- has pickup and delivery service available in all locations;

-- links together the services of thirty-three airlines into one cohesive transportation system;

-- brings these services to 21,000 communities, both large and small, throughout the United States;

-- intermodally ties this to the greatest surface transportation system in the United States for the carriage of small shipments; and

-- provides a full range of transportation services including priority of movement and transportation of articles such as medicines, blood, laboratory animals, important government traffic, financial documents, high value items, perishables.

During the recent mail strike, REA Air Express was one of the few existing means of rapid shipment for banks, brokerage houses and other businesses whose day-to-day operations depend upon the fast and reliable shipment of records.

The contribution which REA makes to a successful Air Express operation is unique. Through REA, every flight of every airline is made available to Air Express, and the best, most efficient service to the public is the guiding principle. Shipments are not held up for consolidation. In

case air service is inadequate or unavailable for any reason, REA's ground services and facilities are immediately on hand, not only at origin and destination but also at intermediate points.

These services are not, would not, and could not possibly, be provided by the forwarders, and should not be placed in jeopardy by the suspension of the new Air Express tariff.

CONCLUSION

For the reasons stated herein, REA Express respectfully requests the Board to reconsider and vacate its suspension of the tariff, or in the alternative, to reconsider and vacate its dismissal of REA's Petition and Complaint in Docket 22096 and grant the relief requested therein.

Respectfully submitted,

Arthur M. Wisehart
Vice President and General Counsel
REA Express, Inc.
219 East 42nd Street
New York, N. Y.

Of Counsel:

Leibman, Williams, Bennett, Baird and Minow
1156 15th Street, N. W.
Washington, D. C.

July 27, 1970

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Petition for Reconsideration on all parties of record to this proceeding by mailing a copy thereof, postage prepaid, to each such person.

John J. C. Martin

Dated at Washington, D. C. this 27th day of July, 1970.

APPENDIX A

Additional and corrected data are available to restate REA Schedule 2 accurately to a proper basis. There are corrections to the revenue figures and cost figures.*

"Revenue Needed" in Schedule 2 was $117,069,000. The revenue estimate is $116,900,000. The airlines' or line haul share is actually $42,700,000. This leaves $74,200,000 for REA total expense and profit. Total expenses after July 1, 1970 in Schedule 2 are $67,562,000, leaving estimated profit at $6,638,000. But there are additional and corrected items which increase the costs originally shown in Schedule 2. These are:

Error in computing claim expense	$ 998,000.00
Supplemental annuity benefits	102,200.00
Additional health and welfare benefits	73,000.00
Supervisory personnel salary increases	154,000.00
Increased railroad retirement benefits	18,000.00
Payroll and fringe benefits for additional labor, based on analysis of actual productivity for the first six months of 1970.	2,340,000.00
	$ 3,685,200.00

*REA Schedule 2 was constructed before the final figures on estimated revenue became available.

APPENDIX B

COMPARISON OF SUSPENDED REA AIR EXPRESS AND AIR FREIGHT FORWARDER CHARGES ON SHIPMENTS WEIGHING 60 AND 100 POUNDS ALL CHARGES ARE GENERAL COMMODITY CHARGES AND INCLUDE PICKUP AND DELIVERY. THESE COMPARISONS SHOW THAT AIR EXPRESS PROPOSED DECREASED CHARGES ARE HIGHER THAN SOME AIR FREIGHT FORWARDERS.

FROM: NEW YORK, N.Y. TO:	WT.	(1)REA AIR EXPRESS	(2)W.T.C.	(3)P. I. E.	(4)AMERFORD	(5)EMERY
ATLANTA, GA.	60	1805	2185	1917	1526	2307
	100	2250	2185	2315	1783	2810
CHICAGO, ILL.	60	1731	2225	1917	1526	2307
	100	2150	2225	2315	1783	2810
DALLAS, TEX.	60	2313	2895	2443	1962	2833
	100	3200	3295	3150	2329	3805
DENVER, COLO.	60	2449	2920	2554	2099	2944
	100	3400	3050	3355	2519	4005
DETROIT, MICH.	60	1611	1880	1794	1370	2184
	100	1900	1880	2110	1400	2585
LOS ANGELES. CALIF.	60	3055	3270	3061	2932	3436
	100	4400	3770	3980	3370	4890
MEMPHIS, TENN.	60	1960	2786	2267	1744	2657
	100	2650	2900	2940	2076	3480
MIAMI, FLA.	60	1998	2746	2322	2165	2712
	100	2800	2850	3045	2165	3590
SEATTLE, WASH.	60	3055	3460	3061	2932	3436
	100	4400	3700	4190	3370	4890

(1) Tariff No. 1, CAB No. 1, HS Docket 22387
(2) WTC No. 1, CAB No. 7; PU&D, CAB No. 8
(3) Tariff No. 1, CAB No. 4, PU&D No. 1, CAB No. 5
(4) P.I.E. Airfreight Memo Tariff Effective June 15, 1970
(5) Tariff No. GC-2, CAB No. 38; PU&D No. 5, CAB No. 48

206(a)

APPENDIX C

Minimum Charges

From	To	Prop. Air Exp.	Present Motor(1)	Air Exp. lower than motor by:
NYC	Cleve.,O.	850¢	916¢ (2)	66¢
NYC	Harrisbg.Pa.	850¢	955 (3)	105
NYC	Detroit,Mich.	850	956 (2)	106
NYC	Wash., D.C.	850	965 (3)	115
NYC	Chicago,Ill.	850	1006 (2)	156

(1) Motor carrier minimum charges include the single shipment pickup charge. Air Express assesses no extra charge for single shipment pickup.

(2) Eastern Central Motor Carriers' Association Tariff No. 500-C, MF-ICC A-362.

(3) Middle Atlantic Conference Tariff 10-T, MF-ICC A-1960, Item 290-I.

APPENDIX D

208(a)

REA'S SHARE OF THE MINIMUM CHARGES

	Date	M/C	REA Share	REA Share Increase in Cents		REA Share Cumulative Increase per Year
	11-11-57	350¢	210¢	--		--
5.1	1-15-63	400	240	30	30	5.9¢
7.2	2- 4-65	470	282	42	72	10.0¢
8.25	3- 7-66	520	312	30	102	12.4¢
9.0	12- 9-66	550	330	18	120	13.3¢
11.5	6-18-69	600	360	30	150	13.0¢
12.5	5-28-70	800	480	120	270	21.6¢

Thus, the increase accruing to REA has averaged only 21.6¢ per year.

These shares are properly contrasted with Motor Carrier Terminal (as distinguished from line-haul) costs. Statement 67-2, the Interstate Commerce Commission's well-known and authoritative "The Role of Regulated Motor Carriers in the Handling of Small Shipments", provides a ready measure of motor carrier pickup and delivery, billing and collecting and platform costs.*

Region	Year	Unit	Out of Pocket Cost in Cents per shipment**	Total Expense Level***
Central	1965	P&D	199.2	
		B&C	64.7	
		Platform	9.9	
		Total	273.8	304.2
Eastern Central	1964	P&D	328.8	
		B&C	83.2	
		Platform	14.4	
		Total	426.4	473.7

*These three costs are the component parts of Terminal Costs.
**Costs are calculated for a 50-pound shipment; Statement 67-2 does not show costs for lower weights. There is much doubt that there is any saving below 50 pounds.
***The total expense here is out of pocket level times 1.111. The total expense level includes no allowance for profit.

APPENDIX E

Airborne Freight Corp.:	1969	1968	% Inc.
Revenues	$60,318,000	$53,872,000	12.0%
Net Income	$1,353,000	($2,144,000)	163.1%
Earnings per sh. com. stock	$0.50	($0.86)	158.1%

Airborne Freight Corp.:	1970	1969	% Inc.
First Quarter Net Income	$ 283,000	($16,000)	

WTC Air Freight: six months ending 6/30:	1970	1969	% Inc.
Sales	$21,657,477	$17,766,273	21.9%
Net Income	$469,656	$307,839	52.6%
Earnings per sh. com. stock	$0.22	$0.14	57.1%

Jet Air Freight:	1969	1968	% Inc.
Revenues	$32,434,000	$26,102,000	24.3%
Net Income	$600,000	$502,000	19.5%
Earnings per sh. com. stock	$0.90	$0.76	18.4%

Emery Air Freight Corp.:	1969	1968	% Inc.
Revenues	$97,847,000	$79,802,000	22.6%
Net Income	$4,654,000	$4,230,000	10.0%
Earnings per sh. com. stock	$1.23	$1.12	9.8%

Emery Air Freight Corp.:	1970	1969	% Inc.
First Quarter Earnings	$ 1,100,000	$694,000	6.9%
Earnings per share	$0.31	$0.18	

Wings & Wheels:	1969	1968	% Inc.
Revenues	$31,760,000	not available	----
Net Income	$1,204,000	" "	----
Earnings per common share	$0.68	" "	----

(From published financial records.)

Region	Year	Service Unit	Out of Pocket Cost in Cents per shipment*	Total Expense Level
East - South	1964	P&D	231.2	
		B&C	75.9	
		Platform	11.4	
		Total	318.5	353.9
Middle Atlantic	1964	P&D	238.4	
		B&C	59.8	
		Platform	11.9	
		Total	310.1	344.5
Middlewest	1965	P&D	201.0	
		B&C	69.6	
		Platform	11.9	
		Total	282.5	313.9
Pacific	1963	P&D	203.6	
		B&C	74.6	
		Platform	13.5	
		Total	291.7	324.1
Rocky Mountain	1963	P&D	209.0	
		B&C	86.1	
		Platform	15.8	
		Total	310.9	345.4
South - Central	1964	P&D	249.6	
		B&C	68.1	
		Platform	12.5	
		Total	330.2	366.9
Southern	1964	P&D	150.6	
		B&C	54.3	
		Platform	9.2	
		Total	214.1	237.9
Southwest	1965	P&D	184.2	
		B&C	55.4	
		Platform	11.8	
		Total	251.4	279.3
Transcontinental	1963	P&D	224.4	
		B&C	90.2	
		Platform	16.3	
		Total	330.9	367.6

To put these figures in perspective, during 1963, 1964, and 1965 REA had shares of minimums of 240¢ and 282¢. The motor regions, supra, averaged 337.4¢ costs for similar but unhurried, normal, day to day, ordinary freight services! A similar ICC study for the year 1968 (Statement 7-69, Cost of Transporting Freight by class 1 and class 11 Motor Common Carriers of General Commodities) allows the calculation of costs for motor regions for 1968. On a total expense level, they are:

Central	344.7
Eastern Central	510.6
East - South	451.4
Middle Atlantic	437.0
Middlewest	378.4
Pacific	421.6
Rocky Mountain	368.7
South Central	396.8
South	297.2
Southwest	318.3
Transcontinental	479.3
Average	400.4

During 1968, REA's share was 330. Current data are not available, but the pattern would be the same.

John J C Martin
Director of Economic
Regulation and Assistant
General Counsel

REA Express

219 E 42nd Street
New York, NY 10017
Tel 212 557 8805

LETTER DATED AUGUST 4, 1970

Civil Aeronautics Board
Docket Section
1825 Connecticut Avenue, N. W.
Washington, D. C. 20428

August 4, 1970

Re: Dockets 22387 and 22095

Dear Sirs:

We respectfully request that the following corrections be made in the Petition for Reconsideration, filed on July 31, 1970 on the above matter:

1. On page 3, 4th line from the bottom, the word "if" should be "is". That line will then read "the ratio of air to surface shipments is 38.5% to..."

2. On pages 18 and 19, the Petition is dated July 27, 1970. These pages should be corrected to read July 31, 1970.

3. On Appendices D and E, there may have been a collating error. Appendix E is one page and should be the final page of the Petition. Appendix D has three pages starting with the page headed REA's share of the minimum charges; the second page starts with costs of the East-South region and the third page starts with the phrase, "to put these figures in perspective..."

4. On Appendix E there are two errors in the final "%, Inc." column. Under Airborne Freight Corp., the income line and earnings per Sh. Com Stock should be blank in the percent increase column. Under Emery Air Freight Corporation first quarter earnings, the percent increase now shown as 6.9% should read 58.5%.

Respectfully submitted,

John J C Martin

John J. C. Martin
Director of Economic Regulation
and Assistant General Counsel

Enclosures
cc: All parties

BEFORE THE CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Revisions in Air Express rates and charges proposed by REA EXPRESS, INC. AND PARTICIPATING AIR CARRIERS	Docket 22387

MOTION FOR WAIVER UNDER SECTION 302.37(b) OF THE BOARD'S RULES

REA Express, Inc., respectfully moves the Board to waive the twenty-five page limit contained in Section 302.37(b) of the Board's Rules of Practice and to accept and consider herein the hundreds of letters and telegrams from Air Express shippers supporting the proposed tariff revisions which are the subject of this proceeding. Copies of the letters and a list of shippers who sent telegrams are attached hereto.

REA Express believes that in acting on the tariff the Board should have before it the views of interested members of the shipping public. Accordingly, it asked key Air Express shippers to express their views if they wished to do so. In what is unprecedented support for a tariff revision--including the increases--hundreds of shippers of Air Express have taken the time and effort to express to the Board their support for the new tariff by letter and telegram. Over two

hundred already received are attached hereto. Others are coming in and will be submitted when available. These are not the result of a month-long beating of the bushes to unearth a few ignorant shippers who might come in support of increases. These are sophisticated traffic people who appreciate the priority high grade service given by REA and also understand how much more expensive other air services are. Their active support casts grave doubt on the exercise of the suspension power. In our view, it is imperative that the Board consider these communications since it is the only practical way members of the shipping public can be heard at this time on the issue of suspension, which is vital to their interests. This form of public participation in Board proceedings is consistent with the Board's proper role as a regulatory and administrative agency with the ultimate goal of preserving the public interest. The Board's rule limiting the number of pages a petition for reconsideration may contain should not bar the shipping public from being heard with respect to REA's petition to vacate the suspension.

CONCLUSION

For the reasons stated above REA Express respectfully

requests that the Board waive the twenty-five page limitation in Section 302.37(b) of its rules and accept and consider the communications attached hereto.

Respectfully submitted,

Arthur M. Wisehart
Vice President and General Counsel
REA Express, Inc.
219 East 42nd Street
New York, New York 10017

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing Motion and attachment upon all parties of record to this proceeding by mailing a copy to each such person postage prepaid.

John J. C. Martin

July 31, 1970

BEFORE THE CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Revisions in Air Express rates and charges proposed by REA EXPRESS, INC. AND PARTICIPATING AIR CARRIERS	Docket No. [illegible]
PETITION AND COMPLAINT OF REA EXPRESS, INC.	Docket No. [illegible]

REPLY ON BEHALF OF THE AIRLINES
PARTICIPATING IN AIR EXPRESS SERVICE
TO THE PETITION OF REA EXPRESS, INC.
FOR RECONSIDERATION

This reply is submitted on behalf of the thirty-three airlines participating in air express service with REA Express, Inc., pursuant to Agreement C.A.B. No. 17935 and under Standard Air Express Tariff No. 1, C.A.B. No. 1, C.T.C. (A) No. 1, G. T. Miano, Agent.

I. THE POSITION OF THE AIRLINES

The airlines fully support the request of REA Express that the suspension of the revisions to the air express tariff, filed to become effective July 27, 1970, should be vacated, and that the said rates and charges should be permitted to become effective during the investigation of the lawfulness of the said rates and charges pursuant to the Board's Order

70-7-109 and during the concurrent investigation of air express service pursuant to the Board's Order 70-7-110.

The airlines are opposed to the alternative relief requested by REA Express in its petition, namely, that the Board vacate its order dismissing REA's Petition and Complaint in Docket No. 22098 and grant the relief requested therein.

II. REASONS IN SUPPORT OF THE AIRLINES' POSITION.

A. The suspension should be vacated.

The new rate structure and rate level are designed to produce the additional revenue required by REA Express to meet its increased operating costs and produce a reasonable return. The new rates are not intended to, nor expected to, produce any appreciable increase in net revenue for the airlines under the new formula for division of revenue between REA Express and the airlines, based on the present volume and mix of air express traffic.

The present Air Express Agreement, C.A.B. No. 17935, became effective on August 1, 1964. Section VI.C of that agreement provides for rate increases because of increased costs. Where such a rate increase is initiated by only one party to the agreement (REA Express being one party and the airlines collectively being the other), the additional revenue accruing from such rate increase is allocated to the party for whose benefit the rate increase was made. During the entire period since August 1, 1964, almost all of the additional revenue derived from rate adjustments has been allocated to REA Express to meet its increasing costs. Thus, for the year 1969, a total of $9,530,192 was allocated to REA Express from gross air express revenues, and nothing to the airlines, because of such

rate adjustments attributable to increased costs. Insofar as the airlines are concerned, they are continuing to transport air express traffic for virtually the same revenue per ton mile that they were receiving in 1964, despite the increased costs that the airlines have also incurred since that date.

The fact that motor carrier pickup and delivery and terminal costs have increased steadily and substantially since 1964 cannot be doubted. REA Express, in Appendix D to its Petition, has set forth figures showing the costs to regulated motor carriers of performing such services in the various regions of the United States. Additional evidence of such increases is readily available in the tariff files of the Board. If a comparison is made of the pickup and delivery charges published today by the airlines in Official Air Freight Pickup and Delivery Tariff No. 8-C, C.A.B. No. 19, Airline Tariff Publishers, Inc., Agent, with those published five years ago, or during any of the intervening years, the steady and substantial increase in such costs is apparent. The additional revenue required by REA Express to cover its increasing costs for providing pickup, delivery, terminal, and other services for air express shipments simply reflects the situation prevailing throughout the motor carrier industry, and, for that matter, throughout the transportation industry generally.

REA Express, in its Petition for Reconsideration, has clearly demonstrated that the new air express rate structure and rate level are both necessary and proper for a continuation of the air express service. The rates and charges proposed are neither unreasonably high nor unjustly discriminatory, as REA Express has clearly demonstrated in its comparison of the new rate level and rate structure with the rates and charges of comparable

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and competitive forms of transportation.

The Board, in its order of suspension, has adverted to the fact that the revised air express rate structure and rate level involves very substantial percentage changes over a relatively short period of time in both the minimum charge and in certain short-haul markets. The fact that substantial changes in the rate structure are required does not justify a conclusion that such changes are either unreasonably high or unjustly discriminatory. As REA Express has so aptly stated in its Petition, the air express rate structure is archaic and long has been in need of a complete readjustment to reflect current costs and operating conditions.

The language and tenor of the Board's order of suspension appears to be addressed more to the concept of protecting the shipping public against substantial variations in the air express rate structure than to protecting the shipping public against rates which are prima facie unreasonably high or unjustly discriminatory. The Supreme Court of the United States many years ago addressed itself to a very similar situation in the leading case of Southern Pacific Company v. Interstate Commerce Commission, 219 U.S. 433, 55 L.Ed. 283, in which the Court reversed an action of the Interstate Commerce Commission holding certain substantially increased rates to be unjust and unreasonable. In summarizing the position of the Commission, which the Court found to be unlawful, the Court stated as follows (55 L.Ed at 289):

> " ... we think when the opinion is considered as a whole, in the light of the condition of the record to which we have referred, it clearly results that it was based upon the belief by the Commission that it had the right, under the law, to protect the lumber interests of the Willamette Valley from the consequences which it was deemed would arise from a change of the rate, even if that change was from an unreasonably low rate, which had prevailed for some time, to a just and reasonable charge for the service rendered for the future. Manifestly,

> this was deemed by the Commission to be the power which was being exerted, since Mr. Commissioner Harlan, joined by the Chairman of the Commission, dissented on the ground that the order was an exertion of a power not possessed, to give effect to a supposed equitable estoppel ..."

The Board's references to the several increases in the minimum charge within a relatively short period of time, and its references to the substantial percentage increases in the short haul markets, disclose an intent, similar to that of the Commission in the above-cited case, to protect the shipping public against sudden and substantial changes in the rate structure, even though those changes involve a restructuring of rates which are unreasonably low to a level which is reasonable and proper.

The Board, in its Order No. 70-7-110 has undertaken a broad investigation into the role of air express service as a whole. Certainly it is both necessary and proper, as an essential element of that investigation, that the air express service be operated under a rate structure and at a rate level which appropriately reflects the cost of providing such service, including a fair return to the carriers. Unless such rates are in effect during the investigation, rather than the present rates which are clearly inadequate, the conclusions to be drawn from the facts developed during the investigation will be based upon a misleading and crumbling foundation.

For the foregoing reasons, the airlines fully support the request of REA Express that the suspension order be vacated.

B. <u>The alternative relief should not be granted</u>

By its Order 70-7-110, the Board dismissed the Petition and Complaint of REA Express in Docket 22096. In its order of dismissal the Board stated that the investigation it is undertaking with respect to the over-all role of air express in air

transportation is actually broader in scope than that requested by REA Express in its petition and complaint. [illegible] this is true.

With respect to the particular interim relief requested by REA Express in its petition and complaint, the airlines, in their "Answer" filed April 17, 1970, to the REA Express Petition and Complaint, have fully stated their reasons why such interim relief should not and could not be granted by the Board. The airlines respectfully refer the Board to the Answer, rather than restating those reasons here.

Wherefore, the thirty-three airlines participating in the air express service respectfully request the Board to modify its Order 70-7-109 in Docket 21866 to the extent that such Order suspends the revised air express rates and charges filed to become effective July 27, 1970.

Respectfully submitted,

Russell S. Bernhard
Attorney for the Airline
participants in Air Express
Service.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing Reply upon all parties of record in this proceeding by properly addressed first class mail.

Russell S. Bernhard

Dated at Washington, D.C. this 4th day of August, 1970.

222(a)

BEFORE THE

UNITED STATES CIVIL AERONAUTICS BOARD

Washington, D. C.

Revisions in Air Express rates and charges proposed by REA EXPRESS, INC. AND PARTICIPATING AIR CARRIERS	)	Docket 22387

ANSWER OF AIR FREIGHT FORWARDERS ASSOCIATION TO PETITION FOR RECONSIDERATION

The Air Freight Forwarders Association (AFFA) on behalf of the air freight forwarders represented by it in this proceeding hereby answers the Petition of REA Express, Inc. for Reconsideration of Order 70-7-109 which suspended and ordered an investigation of air express rates marked to become effective July 27, 1970.

The petition should be denied. We do not believe that it raises any new matter for the Board's consideration nor error on the part of the Board.[1/] Nevertheless, we feel it would be

1/ The sole offer of "new" matter is that relating to 200 shipper letters which REA solicited, and obviously composed, for purposes of this proceeding. Those letters, however, prove nothing of relevance. It is apparent that the letters were a product of a form letter campaign on the part of REA, resulting in, for the most part, identical representations. They cannot therefore be accorded much weight in any event. Moreover, REA has insinuated a strawman into the letters insofar as AFFA is concerned for the AFFA has certainly no objection per se to rate increases for the traditional express traffic. AFFA does object, however, if these increases are to be used to subsidize REA's predatory below-cost participation for the first time in the 100-300 lb. weights. Again, to the

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helpful to the record to briefly comment with regard to certain statements and allegations in the petition:

1. REA contends that the Board has somehow through "regulatory conservatism" created a situation which may lead to the termination of air express service. Nothing could be further from the truth. The truth is that REA, under the guise of a tariff filing, has attempted to evade the licensing provisions of the Act and invade the air freight forwarding market as it had attempted through other devices to do in the past. While REA contends that its proposal presents the Board with questions of simple tariff "reforms" 2/ (and REA criticizes the Board's failure to accept these), REA has in fact presented the Board with a radical proposition pregnant with insurmountable licensing difficulties. If there has been any lack of grace

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1/ Continued

extent that the letters appear to support decreases in the higher weights, it is not surprising that shippers would be found to support reductions over existing charges. Their support is necessarily devoid of any analysis of cost of service data or undue competitive advantage to REA. Even if the shippers were fully aware of what they were saying in the letters pre-packaged for them, no economic justification is shown by letters purporting to support the tariff. Finally, we do not know what misinformation, inducements or other veiled threats may have been used, nor how many shippers contacted refused to sign even under the circumstances in which the letter may have been offered them.

2/ Petition, p. 5. Compare a statement of REA widely circulated in the press at the time of the subject filing that the tariff was designed to place REA in direct competition with air freight forwarders. (See article from Traffic World, June 27, 1970, p. 23, attached hereto as Appendix A. See also similar references, which REA itself manifestly drafted, in the various shipper letters attached to its petition).

or concern in this matter, therefore, it has been on the part of REA in blatantly presenting these new service proposals to the Board as a tariff matter.

Similarly, it would seem manifest that, through what were doubtlessly scare tactics at best and distortions at worst, REA has attempted to convince its shippers that the Board action in suspending the tariff is somehow Board action terminating REA's operating authority. Thus, where some of the shippers have strayed from the language of the composed letter, presumably to state what was orally conveyed to them during the letter-promoting campaign, they have indicated their understanding to be that "REA Express's license is being considered for renewal" or that there is a "possible curtailment of REA's service". (E.g., letter from WIIC-TV, letter from Stauffer Chemical Company). It is this kind of misinformed and misused pressure that REA would have the Board substitute for facts. 3/

3/ Equally indefensible is the implication in the REA petition that forwarders use air express in situations where they wish to obtain some kind of specialized or expedited service. Such an assertion is absurd. A number of forwarders do, of course, use air express in very limited situations but the use is entirely for rate reasons. Most of this movement has been on short-haul movements involving single shipments to secondary or tertiary points where the former $6 REA minimum was less than the airline $10 minimum. The recent increase in the REA minimum to $8 has diminished the use. Moreover, whenever the forwarder has used air express, almost invariably it has imposed its own service on top of REA's because of the ineptness of REA's service, particularly in ground handling and tracing. Thus, in very many cases even though the REA rate includes pickup and delivery, the forwarder has delivered the package to the airport and put it into air express service at the airport, and picked it up at destination airport rather than to rely upon pickup, delivery or tracing by REA. In reality it hasn't been REA "service" therefore that has been used at all.

2. Consistent with its attack on the Board, REA has sought to create a minute-before-midnight crisis atmosphere, hoping thus to induce the Board to act precipitously in violation of the Act and its Regulations. REA repeats its contention that the Board is about to cause the demise of air express service. The gist of this crisis contention is that REA is so financially helpless that it cannot agree to maintain the status quo during a period of an investigation without going bankrupt.

Grave doubt exists, at the very least, that it is the province of a regulatory agency to save a carrier from the financial results of its own ineptness or technological changes in surface transport at the expense of other modes and of the public, even were the assertions of dire financial disaster to have a ring of truth. But, the Board should note, REA's forecast of its financial future has varied widely with the particular forum before which it is making its prophecy. Just a month ago the principal executives of REA vigorously dispelled the existence of any financial crisis. In a statement reported in the trade press, Messrs. Mosely and Kole said that REA's money problems are not really serious and the company is in fact in better financial condition today than it has been in several years. (Appendix A)

But even conceding a slight grain of truth to REA's claim of poverty, REA and the airlines can always institute the 50 cent per shipment across-the-board increase that we

suggested but which REA has sedulously avoided reference to in its petition. Moreover, no one, much less the air freight forwarding industry, desires to stretch out the Express Service Investigation proceeding beyond normal limits. In fact, there is no reason why such investigation cannot be conducted at such pace to serve REA's alleged needs as is reasonably consistent with the availability of the Board's facilities and the convenience of all parties.

Moreover, there has been a consistently perverted effort by petitioner throughout all phases of this proceeding to confuse REA and "air express", to create the impression that there will be a deprivation of public service if the marriage of REA and "air express" were to be dissolved. In fact, expedited air service would be available from the air freight forwarders and the airlines, at a minimum equal to and in most cases superior to, that of REA's air express service, irrespective of REA's participation in air express. As we noted in our original complaint, many forwarders have exclusive air operations at more cities than does REA. A number of forwarders have at least as many service points in their air tariff and actually service such points, in many cases through their own employees while REA may be serving them only through agents. If some shippers are unaware of this broad spectrum of forwarder door-to-door service that at the very least matches REA in number of points, it is because "air express" as a generic name had come to mean something which in truth it no longer is and because the contraction in quality and

extent of its service and the development of equal or superior service by the forwarders and the airlines have run ahead of full awareness on the part of many of the shipping public of such changes. The air freight transportation industry would adequately fill any service gap that may appear from the abandonment by REA of air express service.

3. The petition, with a 180-degree twist of the Federal Aviation Act and the Board's Regulations, attempts to saddle the Board with the burden of proving that the filings are economically unsound, that is, that a tariff filing shall not be suspended unless the Board can find no economic justification for it. In contending that the Board should suspend a tariff "only after the clearest kind of justification [for the suspension] has been established" (Petition, pp. 15, 16), REA would have the Board adopt the principle that REA may file what it will and the Board should not, indeed cannot, suspend unless the Board can find no economic support for the filing. However, quite apart from the fact that the suspended tariff involved not merely a new rate filing but the institution of a new and unauthorized kind of service, under well-recognized and long-settled law and practice embodied in the Board's Regulations there must be affirmative economic support adduced by the carrier for a carrier's tariff filing. The burden is on the carrier to support it, not on the Board to negate it. The locus of the burden continues the same throughout the proceeding (Rules of Practice, Section 302.506). We thought

this rule was so elementary as to be indisputable. The contention to the contrary by REA may be the reason it has produced no real additional economic data in defense of its filing even now, but has instead attempted to rely on a patently erroneous view of the Board's Regulations and its obligations thereunder.

Indeed, as we noted in our original Complaint, to the extent to which the airlines and REA filed economic data, such data affirmatively established that the rates were not economically justifiable. Nothing new has been presented in REA's petition in this connection except that in the short span of less than a month, REA has come up with an additional $3 million of alleged expenses, including a $1 million "error". We have already shown that REA's cost data is deficient, and this new data is deficient for the same reasons. The only purpose these mercurial changes serve is to exemplify the "flexibility" of REA's unsupported, unreported, variegated figures and their consequent unreliability. REA's past and continuing failures in supplying support cannot now be twisted into the required justification; nor should REA be permitted to pass the buck to the Board for any failure of proof.

4. REA indicates that the forwarders' economic picture is brightening, citing figures in its petition (Appendix E). While REA here is apparently looking at total company operations of selected forwarders to suit its purposes, just as

it has called attention to its own surface losses, if the Forms 244 figures for the forwarding operations of the forwarding industry are examined they show a deteriorating rate of return on investment in recent years, resulting primarily from the substantial new investment needs which are being generated in the industry. It means little, therefore, that REA may be able to find instances where individual companies may appear to be making a modest profit. The point is that the industry is in no position to absorb destructive, below-cost rate-making schemes, apart from the fact that the proposals are by themselves in violation of the Act. As reflected in Exhibit 3 of our original Complaint, REA had proposed to undercut the forwarders' rate structure by several dollars per shipment at all weights between the fifteen major markets listed in REA's exhibits, with even a greater reduction in the forwarders' level in minor markets than in major markets. REA can hardly point to any existing forwarder returns as able to withstand any such onslaught. Indeed, as we pointed out, neither would REA, without shortly coming back to the airlines hat-in-hand for more. In the meantime we would be well on our way to the destruction of the $250 million domestic forwarder industry.[4/] This is the nub of the matter.

4/ REA claims (Petition, p. 11) that the air freight forwarders, as consolidators, somehow enjoy a better competitive position with respect to airline costs than does REA. The fact is, however, that REA payments to the airlines are based on a formula which is closely akin to a negotiated annual aggregate rate, which the forwarders, of course, do not enjoy. As a result, forwarders pay over to the airlines 50 cents of every

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5. REA's petition, in fact, affirmatively demonstrates a point that by itself would support suspension but that was not evident in its original Justification, that is, that the effect of the proposed tariffs would be anti-promotional as far as air cargo is concerned. Thus, REA is increasing the level of its rates on traditional air express at a much faster percentage rate than on its surface traffic. As found by the Board in Order 70-7-109, air express minimum rates have gone up 42 percent within the last two years. The suspended increases range up to 138 percent in certain markets. (Ibid.) REA's surface rates, on the other hand, have gone up only 15 percent since January 1, 1969. (Petition, p. 4, n. 1). The result is an increase in the spread between REA's air and surface rates which can only cause diversion of express traffic from air to surface, inhibit the normal diversion of surface traffic to air and aggravate the condition under which air express revenues subsidize REA's uneconomic surface operations.[5/] Acceptance of the tariff would thus be in derogation of Section 102 of the Act for these reasons, also.

* * * *

4/ Continued

dollar they receive, whereas REA presently pays over only 40 cents and under the proposed rates it would pay less than 35 cents. Moreover, the airline costs of forwarders have risen substantially whereas REA's airline costs have not. The competitive advantage in this area, therefore, if any, clearly lies with REA.

5/ REA has long been privy to this type of anti-promotional conduct against air traffic and in favor of its surface traffic. See Railway Express, Airfreight Forwarder Application, 27 C.A.B. 500, 521, n. 43, 537 (1958).

In sum, the petition is bereft of any qualitative response to the Board's rationale in the suspension Order and to the substantive contentions in the AFFA Complaint and request for suspension. Both REA and the airlines had an opportunity to establish the economic validity and regulatory lawfulness of the tariff and proposed operations at the original filing. They did not do so then. Both REA and the airlines in their joint petition for reconsideration (the 33 airlines joined in it by telegram) have had another opportunity to do so and have failed to produce one iota of new supporting data. REA's petition for reconsideration of Order 70-7-109 should therefore be denied.

Respectfully submitted,

LOUIS P. HAFFER

ROBERT N. MEISER

Haffer, Goldstein & Meiser
1730 Rhode Island Avenue, N.W.
Washington, D. C. 20036

Counsel for the Air Freight
Forwarders Association

August 5, 1970

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Answer on participating air carriers, REA Express, Inc. and the Bureau of Economics by mailing a copy thereof to each such party or the attorney for each in a properly-addressed envelope, postage prepaid.

Dated at Washington, D. C. this 5th day of August, 1970.

ROBERT N. MEISER

REA Says Money Problems Are Not Really Serious; Air Express Tariff Ready

Despite a petition it has filed with the Interstate Commerce Commission in which it is indicated that creditors are in a position to foreclose on certain debts, REA Express says its money problems are not really serious and that the company is, in fact, in better financial condition today than it has been for several years.

REA recently asked the Commission for authority to modify a loan agreement and, in its petition, asserted that it had a deficiency in working capital. That assertion is true according to Spencer D. Moseley, chairman, and Tom Kole, president, but the deficiency is more technical than real and REA—basically a cash and carry company—is in no danger of running out of operating funds and in no danger of experiencing a cash flow problem that would result in diminished service or an inability to pay shipper claims.

The two REA executives met with newsmen June 24 to discuss the opening of a new terminal in the Washington-Baltimore area and the reaching of an agreement "in principle" which will give REA more air express revenue. But aware that "the Penn Central has made everybody cash flow conscious," the two men spent a good part of the time talking about REA finances.

REA's loan program and its union contract are unusual. The union contract, inherited from a previous management, requires that funds to cover employe vacation pay a year in advance be maintained in a fashion amounting to an escrow account. The loan program prohibits the company from falling into a deficit working capital position.

As of last April, Mr. Moseley explained, REA had assets of about $36 million and liabilities of $51 million. Thus, it technically was in a deficit working capital position. But some $18 million of the $51 million worth of liabilities was the vacation "escrow fund." Subtracting that $18 million would leave REA with liabilities of only $32 million against assets of $36 million—a positive position.

To clear up these technical problems, REA sought and won modification of its loan agreement. It also obtained a $15 million line of credit. It then turned to the ICC for approval of these loan arrangements.

"And that action," explained Mr. Moseley, "has led to some conjecture that we're in money trouble. That's simply not so. Things are a great deal better with us today than they were earlier this year. There's no danger at all that REA will become another Penn Central."

Concerning air express, Mr. Kole revealed that REA is preparing to file tariffs calling for higher rates on short-haul express shipments, lower rates on long-haul shipments and for an increase ($8 to $8.50) in the minimum charge. He sees this tariff, for which Civil Aeronautics Board approval is required, as one that will make REA and air express service competitive with air freight forwarders and cargo-carrying airlines.

The tariff is based on an agreement in principle reached with the nation's scheduled airlines. That agreement will give REA about 65 per cent of the revenue generated by air express service leaving airlines with 35 per cent. For REA, at least, the revenue split represents an improvement. The existing air express agreement calls for REA to receive only 59 per cent of the revenue generated by air express service.

(See earlier stories on pages 64 and 96)

BEFORE THE CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Revisions in Air Express rates and charges proposed by REA EXPRESS, INC. AND PARTICIPATING AIR CARRIERS	Docket 22387

PETITION AND COMPLAINT OF REA EXPRESS, INC.	Docket 22096

ANSWER TO PETITION FOR RECONSIDERATION

MUZAK, A DIVISION OF WRATHER CORPORATION (hereinafter referred to as "MUZAK") submits this answer to the Petition For Reconsideration filed herein by REA Express, Inc. regarding Orders # 70-7-109 and 70-7-110.

I.

The Petition of REA, it is submitted, deals in broad generalities dwelling upon their financial plight. They do no indicate if their financial plight is due to their surface or air operations. In fact, it is submitted, that they carefully avoid differentiating between the various types of service that they perform insofar as it concerns

the description of their financial status. It is conceivable that they are making a profit on the Air Express aspect of their operation --- and losing money on the surface phases. Accordingly, it is submitted that they have not presented to the Board substantiation of their allegations as to the consequences which would result from the Board's Order specifically upon their Air Express service (Section 302.37 [B_7).

Similarly, there does not appear to be any statement set forth that there is any new matter being presented which with due diligence Petitioner could not have known or discovered such new matter prior to the date the instant case was presented to the Board for decision.

Accordingly, it is respectfully submitted that from the procedural aspects, the Petitioners have failed to meet the requirements to prevail in their Petition For Reconsideration.

II.

That which is set forth above regarding the deficiencies in the procedural aspects of the present application by the REA similarly, in part, has relevancy to the substantive phases of the Petition For Reconsideration.

There has been no rebuttal of the opinion of the Board that the justification presented by REA and the airlines was not adequate to support the proposed rate structure. In fact, there has been no attempt in the Petition For Reconsideration to now attempt to justify the proposed rate structure (although it is acknowledged that procedurally to now attempt to justify the rate structure would not be in keeping with the regulations of the Board applicable to Petitions For Reconsideration.) Throughout the present proceedings the REA has indulged in conduct that might be analagous to "brinkmanship" by threats of dire catastrophe befalling unless this particular tariff, as written, were "rubber stamp" approved.

It is also of interest to note the type of shippers who have written letters on behalf of REA. They seem primarily to be the big business firms who might not be as dependent on REA for small parcel Air Express shipments on a timely basis and department stores and other members of the National Retail Merchants Association who use, to a major degree, local surface parcel services.

There has been no attempt to rebut the possibility that REA is hoping to support its long-haul business by in-

creasing its charges to small haul shippers who are dependent upon its services in Air Express.

What REA has done is to confirm the importance of its role in Air Express for shippers. As indicated from the earlier Petition of MUZAK heretofore filed, --- it is because of the importance of Air Express to the MUZAK operation that the original complaint was filed herein when it first became evident that the increase in rate in a sixty (60) day period of time would exceed a Hundred (100%) per cent as the same relates to Air Express shipment by the MUZAK franchisees.

To allow the almost One Hundred (100%) per cent raise to go into effect --- while investigating the feasibility of the same --- would be a serious blow to the MUZAK franchisees and all other similar small businessmen who are dependent upon the Air Express service of REA in connection with their basic operations.

It is re-emphasized that REA has very carefully avoided noting from whence the loss that they are suffering arises, i.e. whether from their "air" or "surface" operations. They use such phraseology as the amount "allocable" to air. It is respectfully submitted that when one discusses "allocability" of certain charges, it is questioned whether the same are direct charges or the various indirect charges of the overall operation that are allocated based upon the formulae of accountants and others to meet

specific statistical requirements.

The survival of the REA organization is essential to people such as MUZAK and its franchisees. However, it is respectfully submitted that when one dissects all of the smoke, flame and fury set forth in the Petition For Reconsideration of REA herein, they have not come forward with any statements that show that they are not presently making a profit from the Air Express service that they render in their monopolistic role of providing Air Express service to shippers of small parcels. They have not indicated anything to dilute the fact that their proposed tariff would charge against those who are most dependent upon their services the cost of supporting their other services.

It is further respectfully noted that the REA organization has failed to even dissect its element of profit as relates to the small shipper who is to unjustly bear the present burden of increases as set forth in their proposed discriminatory tariff.

The entire Petition For Reconsideration by REA, it is submitted, cleverly hides the answers to the questions as to whether or not the Air Express service rendered to shippers of small parcels is presently a profitable activity. There are too many unanswered questions --- and not enough justification --- to permit the prejudicial tariff of REA to automatically become effective.

WHEREFORE it is respectfully prayed that the present Petition For Reconsideration, based both on the procedural grounds as well as the substantive grounds, be denied in its entirety.

Respectfully submitted,

J. R. H. WILSON
Senior Vice President
MUZAK, A DIVISION OF
WRATHER CORPORATION
100 Park Avenue
New York, N.Y. 10017

Of Counsel
MICHAEL M. GOLDBERG, Esquire
100 Park Avenue
New York, N.Y. 10017

August 6, 1970

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Answer to Petition For Reconsideration on all parties of record to this proceeding by mailing a copy thereof, postage prepaid, to each such person.

Edith Ravitch

Dated at New York, New York this 6th day of August, 1970

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240(a)

BEFORE THE

CIVIL AERONAUTICS BOARD

Revisions in air express rates and charges proposed by RAILWAY EXPRESS AGENCY, INCORPORATED AND PARTICIPATING AIR CARRIERS	Docket 22387

ANSWER OF THE DEPARTMENT OF TRANSPORTATION
IN SUPPORT OF PETITION FOR RECONSIDERATION

By Order 70-7-109 dated July 23, 1970, the Board suspended tariff revisions filed June 25, effective July 27, 1970, by the Railway Express Agency, Inc. (REA) and air carriers participating in the tariffs. The proposed tariff involves increasing minimum charges per shipment under both general and most specific commodity rates. It also includes both increases and decreases in general commodity rates. The increases would affect rates for relatively small shipments and short hauls while rates for large shipments and longer hauls would be reduced.

On the basis of the material filed by REA, it appears that the revision in rate structure may be necessary to bring that structure more closely in line with REA's cost structure. The proposed tariff filing may be a proper way to accomplish this objective.

However, there are substantial questions as to the impact of these rates on competition, the effect on demand for REA services, the diversion of traffic between REA and Freight Forwarders, the effect of the rates on shippers, and how closely the proposed rate structure is related to the cost structure. We believe that all of these questions can be determined in the investigation which the Board directed as part of Order 70-7-109.

All of these unresolved questions would justify suspension of the REA tariff proposal under proper circumstances. REA, however, appears to be in a desperate financial situation. Apparently, the company has lost some $50 million in the last 24 months. It appears, that unless REA's tariff structure is markedly changed immediately, losses will continue and the ability of the company to continue as a viable entity may be threatened. The investigation ordered by the Board will take a substantial amount of time to complete. The decision may come too late to be of any assistance to REA.

The proposed tariffs do not appear out of line with other rates for similar types of services. In short-haul markets, the proposed REA tariffs are still substantially less than Examiner Sheehan found just and reasonable in Docket 20398, Minimum Charges Per Shipment of Air Freight. In long-haul markets, the proposed REA tariffs do not appear out of line with rates charged for similar transportation services by other companies.

Therefore, the Department believes that the Board should grant the REA petition for reconsideration and vacate the suspension of the proposed REA tariffs. Because of the many unresolved questions raised by these tariffs, we believe that the Board should order that the investigation be expedited.

Respectfully submitted,

James A. Washington, Jr.
General Counsel

Dated this 7th day of August
1970 in Washington, D.C.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of this document upon all parties of record to this proceeding.

William A. Kutzke

August 7, 1970

BEFORE THE CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Revisions in Air Express rates and charges proposed by REA EXPRESS, INC. AND PARTICIPATING AIR CARRIERS	Docket 22387
PETITION AND COMPLAINT OF REA EXPRESS, INC.	Docket 22096

WITHDRAWAL, IN PART, OF PROTEST

MUZAK, A division of WRATHER CORPORATION hereby withdraws its protest herein insofar as the suspension of the proposed REA tariff, but ratifies its support of an investigation of said tariff.

Respectfully submitted,

J. R. H. WILSON
Senior Vice President
MUZAK, A DIVISION OF
WRATHER CORPORATION
100 Park Avenue
New York, N.Y. 10017

Of Counsel
MICHAEL M. GOLDBERG, ESQUIRE
100 Park Avenue
New York, N.Y. 10017

August 10, 1970

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Withdrawal, in part, of Protest on all parties of record to this proceeding by mailing a copy thereof, postage prepaid, to each such person.

Edith Ravitch

Dated at New York, New York this 10th day of August, 1970.

BEFORE THE

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Revisions in air express rates and charges proposed by RAILWAY EXPRESS AGENCY, INCORPORATED AND PARTICIPATING AIR CARRIERS	Docket 22387

MOTION OF AFFA
TO STRIKE "ANSWER" OF DOT

On August 10, 1970 we received a document entitled "Answer Of The Department Of Transportation In Support Of Petition For Reconsideration" in the above matter. AFFA hereby moves to strike the document and in support hereof states as follows:

First, AFFA requests that the document be striken on the ground that it is late filed support for the tariffs at issue, or in the alternative that the document on its face be regarded as totally lacking in probative value.

Second, in the guise of a pleading DOT has, at the last possible minute before Board decision, taken a position in favor of subsidizing REA, and even worse, not out of the public treasury, but instead out of the pockets of the air freight forwarding industry. The document was filed in a manner which deprives AFFA of an opportunity to answer these assertions. DOT's highly prejudicial document should accordingly be rejected.

Third, in any event the document on its face lightly and casually refers to summary cost figures which by DOT's

own admission were simply taken from REA's pleadings. Thus, on the basis of evidence already rejected, DOT claims that if the tariff heretofore suspended is not reinstated, the Board proposed air express investigation may be moot because the decision may come too late to be of any assistance to REA. While DOT is apparently not concerned about putting the forwarders out of business, it is the Board's duty to prevent this.

Fourth, no warrant exists in the Federal Aviation Act to permit unlawful rates to become effective even if it were true that REA were in financial distress. Rates must meet the criteria of Sections 403, 404, and 1002. Even DOT concedes they have not met these criteria.

Fifth, DOT statement that in long-haul markets, the proposed REA tariffs do not appear out of line with rates charged for similar transportation services by other companies is incredible. How DOT can make such a statement in view of Exhibit 3 to AFFA's Complaint is beyond our knowledge. DOT's further statement that the share to REA in 100-300 lb. weights may bring the rate structure in line with REA's cost is also incredible. Air express rates as distinct from REA's share of such rates have little relevance to REA's "cost structure." It is evident, as we noted in our complaint, that REA's return here would be substantially below the cost of their service and functions. We can only surmise that DOT did not look at the record on these or any other issues. Its document therefore is totally without probative value.

Sixth, DOT, based on individual statements by REA of financial problems in this instance has come out in support of less than $100 million of express business and the nine owners of REA (See Order 70-7-142, July 30, 1970, Docket 21359) and against the interests of $250 million of domestic air freight forwarder business and the thousands of public shareholders who own interests in 200 air freight forwarders. DOT apparently is willing to sacrifice the broad air freight forwarding industry for REA. This is administrative irresponsibility and single company favoritism at its worst.

Respectfully submitted

/s/LOUIS P. HAFFER
LOUIS P. HAFFER

/s/ROBERT N. MEISER
ROBERT N. MEISER

Haffer, Goldstein & Meiser
1730 Rhode Island Avenue, N. W.
Washington, D. C. 20036

Attorneys for the Air Freight Forwarders Association

August 11, 1970

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document on all parties to Docket 22387 by mailing a copy thereof to each such party or its attorney in a properly addressed envelope with postage prepaid.

/s/ROBERT N. MEISER
ROBERT N. MEISER

August 11, 1970

Order 70-8-48

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.,
on the 13th day of August, 1970

Revisions in air express rates and charges proposed by RAILWAY EXPRESS AGENCY, INCORPORATED AND PARTICIPATING AIR CARRIERS	Docket 22387
PETITION AND COMPLAINT OF REA EXPRESS, INC.	Docket 22096

ORDER

By petition filed July 31, 1970 Railway Express Agency, Inc. (REA) requests that the Board reconsider and vacate the suspension of its proposed tariff and permit its revised air express rate structure to become effective pending investigation. REA requested that in the alternative the Board reconsider and vacate its dismissal of REA's petition and complaint in Docket 22096. In addition, by motion filed July 31, 1970 REA requested that the Board waive the 25-page limitation on petition for reconsideration provided in section 302.37(b) of its rules and accept and consider copies of hundreds of letters and telegrams from shippers supporting the tariff revisions.

In Order 70-7-109, dated July 23, 1970 the Board instituted an investigation and suspended tariff revisions marked to become effective on July 27, 1970 on behalf of REA and the participating air carriers. As described in that Order, the proposal involved increasing the minimum charge from $8.00 to $8.50 per shipment; significant revisions in the general commodity rate structure including increases in smaller and shorter-haul shipments and decreases in larger and long-haul shipments; and increases in the excess valuation charges from 18 cents to 30 cents per $100 of excess valuation were also proposed.

A reply on behalf of the airlines participating in air express service (Airlines) has been filed supporting REA's request for reconsideration -- but not desiring dismissal of the investigation. In their reply the airlines maintain, inter alia, that the new rate structure and rate level are designed to produce the additional revenue required by REA to meet its

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increased operating costs and produce a reasonable return; that the new rates are not intended to, nor expected to produce any appreciable increase in revenue for the airlines; that the rates and charges proposed are neither unreasonably high nor unjustly discriminatory; and that the Board's order of suspension appears to be addressed more to the concept of protecting the shipping public against substantial variations in the air express rates than protecting the public against rates which are prima facie unreasonably high or unjustly discriminatory. The carriers, however, are opposed to REA's alternative that the Board reconsider and vacate its dismissal of REA's petition and complaint in Docket 22096 and refer themselves to their "answer" filed April 17, 1970, to the foregoing petition and complaint.

The Department of Transportation (DOT) filed an answer in support of REA's petition. Munak, a division of Wrather Corporation was a complainant against the REA tariff proposal, and filed an answer opposing REA's request to vacate the suspension. Subsequently, by filing received August 12, 1970, Munak withdrew its objection regarding the suspension of the REA tariff.

The Air Freight Forwarders Association (AFFA), also a complainant against the original rate revisions filed by REA, submitted an answer in opposition to REA's petition. The answer alleges, inter alia, that the petition does not raise any new matter for the Board's consideration nor error on the part of the Board; that the petition attempts to saddle the Board with the burden of proving that the filings are economically unsound when, in accordance with the Federal Aviation Act and the Board's Regulations, the carrier submitting the filing is burdened with providing proof of the economic viability of its proposal; and that REA's proposed tariffs would be anti-promotional as far as air cargo is concerned because REA is increasing its air express rates at a much faster percentage rate than increases in its surface traffic rates. Finally the forwarders contend that if REA is in need of additional income, the across-the-board increase of 50 cents per shipment, which the forwarders noted in their original complaint, would provide the additional revenues requested.

When REA's proposal was suspended, we noted that the justifications presented by REA and the airlines were not adequate to support the proposed rate structure. We further noted that REA included a return element based upon an operating ratio of 90 percent and that the use of an operating ratio has not been accepted since the method of computing earning element in terms of a return on investment capital has been considered more appropriate. We therefore concluded that an investigation would be a proper vehicle to determine the appropriate rate of return on investment and other costs presented by REA, including an allowance made for inflation.

REA's petition adverts to losses it has sustained in the past and asserts that the profits forecast under the new tariff were overstated in its justification of the proposed rate. In this regard REA contends that most recent data revealed a ratio of air to surface shipments of

38.5 to 61.5 percent, which increases the projected allocable costs by $940,000 annually. REA states that costs beyond July 1, 1970, can now be more firmly assessed and that additional costs aggregating $3,685,000 over the next 12 months will be incurred. REA now claims that it estimates a profit of $2 million or 20 cents per shipment if the tariff becomes effective. REA asserts that its proposal is a tariff reform which should be tested by actual use; that the proposed minimum charge of $8.50 would be well below those charged by air freight forwarders and in some instances below motor carriers; and that its prior minimum charge shipments were operated at a loss. It also contends that other rates have been uneconomically low and that substantial revisions are warranted. It asserts that its reductions in longer-haul higher-weight rates will enable it to provide competition to other carriers.

The Board has considered the REA petition, the reply of the airlines and the answer of DOT in support thereof, the answer in opposition thereto filed by the Air Freight Forwarders and all relevant matters and has concluded to deny the petition to vacate the suspension pending the investigation. The petition does not contend that the Board's order of suspension was based upon any errors of fact and, except as noted below, no new considerations of substance were advanced. The Board's order noted that the increases in general commodity rates were proposed at levels as much as 85 percent above current levels and 138 percent above the rates quoted prior to May 28, 1970. To illustrate the nature of the increases, a shipment of 55 pounds hauled less than 250 miles would be charged $14.25 under the proposal, but was charged $6.00 prior to May 28 and is being charged $8.00 at present. The impact of this increase upon the large volume shipper of this type of traffic is, of course, obvious. On the other hand, reductions would be as much as 24 percent for longer hauls and larger shipments.

As characterized by REA, the proposals represent an attempt to reform the structure of the tariff. The tariff proponents, however, have not shown that the proposed revised structure is reasonably related to the costs and to value of service considerations at the different weights and distances involved, nor does the petition for reconsideration provide adequate support for these revisions. REA's showing that the aggregate revenues accruing to it under the existing tariff and agreement do not fully cover aggregate costs of operation provides no support for the very sharp increases and decreases proposed for individual rates. Moreover, the presentations by the proponents have not made an adequate showing that the total transportation revenues do not cover the total transportation costs, including those incurred by the direct air carriers as well as REA.

The Board's references to the significant changes proposed, and the corresponding changes in costs to the public are to be considered in the context of the Board's decision to suspend the substantial changes in the absence of adequate support. The Board does not, as suggested by the reply of the participating carriers, conclude that variations in rates are unlawful per se.

The Board is aware of the fact that the proposed rates would be lower than those of the direct carriers in short-haul markets and that in long-haul markets competitive services may offer either higher or lower rates. While the proposed increases would result in rates generally still below those of the forwarders, such a comparison is not determinative of the suspension issue. In this regard we note the significant differences between forwarder and express services, including those in documentation procedures, the absence of the consolidation function in express shipments, and the fact that the express agency historically has been considered to be a high volume specialist with lower rates for small shipments reflecting economics of such operations.1/ We do not believe that the rates of other carriers, under which different services may be provided with different cost characteristics under different conditions than for air express, provide an adequate benchmark for testing the reasonableness of the proposed air express rates. In our judgment, the principal test of reasonableness of the express rates is the costs of providing that service, including the costs of both direct air carriers and REA.

Nevertheless the increases in short-haul shipments will effect a radical change in the costs of this service to the users thereof, and issues have been raised whether such increases would be used to support the reductions in the larger long-haul shipments. The Board believes that these circumstances require that the proposals be scrutinized carefully in an investigation before determining whether they should be permitted to become effective.

The Board has considered REA's request for additional revenues at this time, and the support for such revenues as advanced by the airlines and DOT. We make no determination at this time as to whether we would permit, pending investigation, a tariff revision providing revenue relief which does not involve radical and unsupported revisions to the rate structure. The determination as to any such filing would, of course, be dependent upon a full and adequate support showing the needs of REA for immediate revenue relief. In this connection, we note that REA has provided no adequate documentation for the claim, in its petition for reconsideration, that its earlier justification for the tariff filing understated costs by $3,685,000. We also note that the $5.4 million rate increase proposed includes substantial additional revenues to the direct air carriers for which no valid support has been offered.

With regard to the request to vacate the suspension of increased excess valuation charges, the Board, in suspending the foregoing increases, stated that it does not believe that the charges should exceed the costs of the additional coverage. The petition has not come forth with any data purporting to meet this criterion and there is thus no basis to vacate the suspension of these proposed increases.

1/ It is noted that United Parcel Service, also specializing in small shipments, has forwarder rates applicable in limited markets which are significantly below the current or proposed increased rates of REA.

The Board will deny REA's motion to waive its twenty-five page limit on petitions for reconsideration contained in Section 302.37(b) of the Board's Rules of Practice in order to consider, and accept herein, hundreds of shipper letters and telegrams supporting the tariff proposal. We are constrained to note that these communications were solicited by REA and indeed the expressions of views were couched in substantially identical language. We also note that REA's petition for reconsideration requests review of the suspension in a context that REA will discontinue service unless the Board abandons the orderly procedures contemplated in the express rate investigation initiated, and permits the implementation of the revised rate structure without hearing. The tenor of many of the communications suggests that the support of the tariff proposal was given under the assumption that the tariff revision must become effective prior to hearing, or service will be abandoned. Under the circumstances, the communications are entitled to little if any probative weight. Moreover, the Rules of Conduct in Board Proceedings consider improper any effort to sway the judgment of the Board or solicit communications to the Board other than communications by parties or non-parties under Rules 14 and 15 of the Board's Rules of Practice and a question is thereby presented as to the proprieties of the solicitation.2/

In sum, the Board finds that no new considerations have been submitted which warrant the relief requested by REA in Docket 22387.

We turn next to REA's alternative request that the Board reconsider and vacate its dismissal in Order 70-7-110 of the Petition and Complaint of REA in Docket 22096. REA alleges that if the Board fails to grant its alternative request, in conjunction with Board action denying its primary request, "the Board will have taken away both of the means to make air express viable in the interim while it investigates the longer range aspects." (Pet. p. 13). Upon reconsideration, we disagree with that contention. As we stated in Order 70-7-110, the investigations in Dockets 22387 and 22388 encompass in broader scope many of the matters raised by REA in its Petition and Complaint in Docket 22096. In our view the thrust of that Petition and Complaint is for broad reform and long-range relief relating to the existing air express arrangement. That reform and relief are clearly the subject of the wide ranging investigations in Docket 22387 and 22388, and do not require separate consideration solely on REA's terms. For the short term, the statutory scheme and the nature of the present arrangement, i.e., the conduct of air express service pursuant to a voluntary arrangement between the parties, leaves it entirely up to the parties as to whether such service will continue pending our investigation. We specifically noted this in Order 70-7-110 in our invitation to the parties either to agree to a

2/ See New York-San Francisco Nonstop Service, Reopened, 35 CAB 423, 427, 429 (1962). Affirmed in United Air Lines et al v. CAB 309 Fed. 2d 238 (C.A.D.C. 1962).

pendente lite extension of the present agreement or to file an amended agreement embodying pendente lite their new revenue division formula in terms of the existing express tariff. We did not intend that these be the sole choice left up to the parties, but we cannot agree with REA that interim air express service must only be provided pursuant to the tariff which is under investigation.

Accordingly, pursuant to the provisions of the Federal Aviation Act of 1958, and particularly sections 204(a), 403, 404 and 1002 thereof,

IT IS ORDERED THAT:

1. The petition of REA Express, Inc., requesting the Board to vacate its suspension of the joint tariff revisions of REA and the participating carriers filed June 25, to be effective July 27, 1970, be and it is hereby denied;

2. The Motion for Waiver under Section 302.37(b) of the Board's Rules, filed by REA Express, Inc., in Docket 22387 be and it is hereby denied;

3. The alternative request of REA for vacation of the Board's dismissal in Order 70-7-110 or REA's Petition and Complaint in Docket 22096 be and it is hereby denied;

4. The Air Freight Forwarders Association representing individual air freight forwarders, and Muzak, a division of Wrather Corporation are hereby made parties to Docket 22387; and

5. The Department of Transportation and all parties in Dockets 22096 and 22387 will be served with a copy of this order.

This order will be published in the Federal Register.

By the Civil Aeronautics Board:

HARRY J. ZINK

Secretary

(SEAL)

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 18th day of September, 1970

Revisions in air express rates and charges proposed by RAILWAY EXPRESS AGENCY, INCORPORATED AND PARTICIPATING AIR CARRIERS	Dockets 22387 22544 22545

ORDER

By tariff filing on August 24, marked to become effective September 25, 1970, Railway Express Agency, Incorporated (REA) and air carriers participating in the tariffs with REA propose certain rate revisions in the air express rate structure. The revisions are proposed to provide interim revenues to REA pending investigation in Docket 22387 of an earlier filing intended for July 27, 1970, effectiveness embodying a revised air express rate structure which the Board had previously suspended by Order 70-7-109, dated July 23, 1970. Reconsideration of that order of suspension was subsequently denied in Order 70-8-48 dated August 13, 1970.

The proposed rates would involve both increases and decreases from the current rates. The increases would generally apply to smaller shipments and shipments involving shorter hauls. The decreases would apply to larger shipments and shipments involving longer hauls. More specifically, under the interim proposal:

(1) The lowest charge, as in the suspended tariff, would increase from $8.00 to $8.50 per shipment and, as to five-pound shipments, this charge applies at all distances in each tariff. However, there are significant differences as to the weight of shipments to which this increase applies. For example, under the suspended proposal, for a 250-mile haul, the minimum charge of $8.50 would apply only to shipments of 5 pounds or less with increasingly higher rates for shipments from 6 to 55 pounds. Under the current proposal, for a 250-mile haul the charge of $8.50 would apply to shipments as large as 55 pounds. In markets involving a haul of 1,350 miles or more, the interim tariff is identical to the suspended proposal in that the $8.50 would cover only shipments of 5 pounds or less.

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(2) Increases above $8.50 for relatively short-haul and small shipments would be as high as 30 percent above current levels. For hauls below 250 miles, the proposed rates are 30 percent above the current rates for shipments of 200 pounds or more. The suspended rates would have resulted in increases as high as 85 percent for hauls below 250 miles.

(3) Reductions are proposed for larger shipments and longer hauls as in the suspended filing, but the percentage of reduction would be less. From New York to Los Angeles, the charge for a 100-pound shipment is proposed to be lowered by 19 percent while the suspended rates would have effected a 23 percent reduction.

In support of its proposal, REA claims a serious and immediate need for financial relief. The company cites a loss from its entire operation, including air and surface, of nearly $50 million for the 24 months ending June 30, 1970, and approximately $2.6 million in July of 1970. As of June 28, 1970, REA reports an overall negative net worth of $8.9 million. For the 26-week period ended June 28, 1970, the company asserts that it incurred a loss of $2.2 million in its air operations and $5.9 million in its surface operations amounting to a total loss of $8.1 million.

REA projects revenues of $114,800,000 from the interim proposal which it states will result in an annual profit to REA of 19.5 cents per shipment based upon the traffic of 9,687,000 shipments and expenses of $112,911,000 for the fiscal year ending June 30, 1970.

Complaints requesting suspension pending investigation of the proposed tariffs have been filed by the Air Freight Forwarders Association (AFFA) and Muzak, a Division of Wrather Corporation (Muzak).

In its complaint AFFA alleges, inter alia, that the proposed rates undercut forwarder rates and hence would inject REA into the air freight market in violation of statutory and Board policy; that REA has failed to provide adequate justification as required by the Board's regulations; that revenues resulting from the proposed rates have been improperly assessed and no factual support was provided by REA for its claimed $114.8 million revenue figure; that REA has failed to provide a return on investment analysis as required by Order 70-7-109; and that no reasonable explanation has been given as to why the 50-cent per shipment increase on existing traffic, proposed by the AFFA, is inadequate for the purpose of meeting alleged revenue needs.

Muzak's complaint asserts that REA has not presented sufficient justification as was the case in its previous proposal.

A reply to the forwarder's complaint was filed by the National Small Shipments Traffic Conference, Drug and Toilet Preparation Traffic Conference, Eastern Industrial Traffic League and the National Retail Merchants Association opposing suspension of the proposal and citing a need for air express service.

The investigation instituted in Docket 22387 of the prior tariff proposals embodied a general investigation of the air express rate level and structure and the divisions of the proposed rates and charges as between the air carriers and REA. While both the increases and decreases from current rates contained in the interim proposal are more moderate than those which would be effected by the suspended proposal, the Board finds that there is sufficient question as to their lawfulness as to require investigation thereof. Accordingly, upon consideration of the complaints and all other relevant factors, the Board finds that the revised rates proposed by REA may be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and should be investigated. This investigation will be included in the investigation in Docket 22387.

Turning now to the basic issue presented by the interim filing, the complaints and the answers thereto, the Board finds that the requests for suspension should be denied, and the tariff permitted to become effective pending investigation.

The Board is persuaded that a sufficient need for immediate additional revenues has been presented. As indicated above, REA's exhibits present a picture of losses from air express operations by a corporation in an unfavorable financial position. A profit of 19.5 cents per shipment is estimated under the proposed tariff based upon the current level of traffic at the proposed interim rates. Under this approach and the new division of revenues which will apply to this tariff, all of the additional revenues would go to REA. The Board has previously found that a reasonable return element would provide REA with a profit of 20 cents per shipment.1/ While REA's exhibits are necessarily dependent upon judgment allocations, and assumptions as to the impact of rates upon the movement of traffic, and the 20-cents-a-shipment return element previously found reasonable will be an issue in the investigation initiated in Docket 22387, the Board concludes that interim increase is essential to the viability of REA air express service. 2/

As described above REA is seeking additional revenues by revisions to its rate structure as distinguished from a flat percentage or dollar amount. The statutory rate making scheme contemplates that rates are carrier initiated, and there is nothing per se unlawful in REA pursuing this approach, There is therefore no merit to the AFFA complaint that its suggestion that additional revenues be obtained by a flat 50 cents per shipment in lieu of structure revisions has been disregarded.

As indicated above, the impact on shippers would be more moderate than in the suspended proposal. Muzak, the only shipper complainant, in its protest against REA's suspended proposal stated that its basic charge would have risen from $8.00 to $13.36, an increase of 67 percent. Under REA's current proposal, the foregoing shipment would be subject to a charge of $8.50, involving an increase of 6 percent. While increases for larger

2/ REA has filed an application that the Board permit the proposal to become effective as early as possible, on one day's notice. In view of the complaints the comprehensiveness of the rates changes involved, and the need of providing shippers advance notice of the Board's action, REA's application will be denied.

shipments at a shorter haul will be of a greater percentage, ranging as much as 30 percent, the interim proposal appears to gear rates closer to costs than those currently in effect, and the impact upon shippers will be significantly less than under the suspended proposal. As shown above, several shipper organizations, in reply to the AFFA complaint, have requested that the proposals not be suspended, although they ask that an investigation be instituted.3/

Having considered the complaints, and all relevant matters, the Board cannot find that suspension of the interim proposal is warranted for protection to shippers pending the investigation.

Neither does it appear that suspension is warranted to protect the forwarders. In this regard the modified interim tariff establishes rates that are generally above the rates of the lower-priced forwarders at higher weights and longer distances, although lower than those of higher-priced forwarders. Air express rates at shorter distances were previously below those of the forwarders, and in many cases the interim increases will lessen the amount by which REA undercuts the forwarder. While the decreases proposed will now make air express rates competitive with certain forwarder rates for larger shipments, this we find is no basis per se for suspension of this interim proposal.

The forwarders also raise a question as to the airlines' share of total express revenues as compared with the charges paid by forwarders to the airlines. The heart of the suspension issue is the apparent lawfulness of the level of rates which would be charged the public pending investigation, and in the circumstances here present the Board finds that AFFA has not presented facts or data which would warrant suspension by reason of the divisions issue, or other matters presented by the forwarders.

Accordingly, pursuant to the provisions of the Federal Aviation Act of 1958, and particularly sections 204(a) and 1002 thereof,

---

3/ The Board will grant AFFA's motion to respond to the reply of the National Small Shippers Traffic Conference, et al, and has considered its response. As contended by AFFA the reply raises questions of adequacy of service which may not be in issue herein. However, the reply also alleges the forwarder's position as to air express rates is one, which, if adopted, would operate to stifle competition by excluding air express from an opportunity to effectively compete for long-haul higher-weighted shipments. This, we believe, is a relevant consideration in determining the suspension issue.

IT IS ORDERED THAT:

1. An investigation is instituted to determine whether the rates, charges and provisions described in Appendix A hereto, including subsequent revisions or reissues thereof, are, or will be, unjust or unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and if found to be unlawful to determine and prescribe the lawful rates, charges and provisions;

2. The foregoing investigation be consolidated into the investigation instituted in Docket 22387;

3. The scope of the investigation instituted by ordering paragraph 1 above shall include the issue as to whether the divisions of the rates and charges described in Appendix A are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the Railway Express Agency, Inc. and the air carriers and foreign air carriers parties thereto, and if so, to prescribe the just, reasonable, and equitable divisions thereof to be received by the several air carriers;

4. The complaints of the Air Freight Forwarders Association, in Docket 22544, and Muzak, Division of Wrather Corporation, in Docket 22545, are dismissed except to the extent granted herein;

5. The motion of the Air Freight Forwarders Association for leave to file an otherwise unauthorized document be granted; and

6. A copy of this order shall be served upon the carriers listed in Appendix B, Air Freight Forwarders Association, Muzak, Division of Wrather Corporation, National Small Shipments Traffic Conference, Drug and Toilet Preparation Traffic Conference, Eastern Industrial Traffic League, and the National Retail Merchants Association, which are hereby made parties to this proceeding.

This order will be published in the Federal Register.

By the Civil Aeronautics Board:

HARRY J. ZINK

Secretary

(SEAL)

MINETT, MEMBER, FILED THE ATTACHED CONCURRING STATEMENT.

MINETTI, MEMBER, CONCURRING:

In view of REA's severe losses and uncertain financial prospects, it seems clear that the carrier is entitled to some relief pending an investigation. But what is not entirely clear is whether that relief should come from higher rates from the shipping public or from an adjustment in the division of revenues as between the direct air carriers and REA. The direct air carrier yields from its express business are substantially in excess of their yields from other cargo traffic, including mail. The carriers have never been required to justify these excesses. Hopefully, however, the question of the direct air carrier share of express revenues can be finally resolved in the pending investigation. In the interim, I reluctantly concur in the majority's determination not to suspend these tariffs since at this juncture there appears to be no reasonable alternative.

/s/ G. JOSEPH MINETTI

260(a)

TARIFF C.A.B. NO. 1 ISSUED BY G. T. MIANO, AGENT:

All rates, charges, and provisions on the following pages:

16th Revised Page 122	1st Revised Page 124-B
1st Revised Page 122-A	14th Revised Page 125
1st Revised Page 122-B	14th Revised Page 126
13th Revised Page 123	13th Revised Page 127
13th Revised Page 124	13th Revised Page 128
1st Revised Page 124-A	12th Revised Page 129

Air Canada
Airlift International, Inc.
Air West, Inc.
Alaska Airlines, Inc.
Allegheny Airlines, Inc.
American Airlines, Inc.
Aspen Airways, Inc.
Braniff Airways, Inc.
Caribbean-Atlantic Airlines, Inc.
Compagnie Nationale Air France
Continental Air Lines, Inc.
Delta Air Lines, Inc.
Eastern Air Lines, Inc.
Frontier Airlines, Inc.
Los Angeles Airways, Inc.
Mohawk Airlines, Inc.
National Airlines, Inc.
New York Airways, Inc.
North Central Airlines, Inc.
Northeast Airlines, Inc.
Northwest Airlines, Inc. (Also operating as Northwest Orient Air Lines)
Ozark Air Lines, Inc.
Pan American World Airways, Inc.
Piedmont Aviation, Inc.
Railway Express Agency, Incorporated
San Francisco & Oakland Helicopter Airlines, Inc.
Seaboard World Airlines, Inc.
Southern Airways, Inc.
Texas International Airlines, Inc.
The Flying Tiger Line Inc.
Trans Caribbean Airways, Inc.
Trans World Airlines, Inc.
United Air Lines, Inc.
Western Air Lines, Inc.

Air Express service provided hereunder is performed by the participating carriers pursuant to an Agreement which has been filed with and approved by the Civil Aeronautics Board.

Source: 14th revised page 4 of Agent G. T. Miano's C.A.B. No. 1.

Effective December 5, 1969

7

Order 70-9-134

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 24th day of September, 1970

Revisions in air express rates and charges proposed by RAILWAY EXPRESS AGENCY, INCORPORATED AND PARTICIPATING AIR CARRIERS	:	Dockets 22387 22544 22545

ORDER

On September 18, 1970, the Board issued Order 70-9-98 in which it initiated an investigation of a tariff proposal filed on behalf of Railway Express Agency, Incorporated (REA) and participating air carriers, marked to become effective September 25, 1970. This investigation was consolidated into a pending investigation instituted in Docket 22387 which is an investigation of tariff revisions proposed by REA and participating carriers which had previously been suspended by Order 70-7-109 dated July 23, 1970, reconsideration denied by Order 70-8-48 dated August 13, 1970.

In its Order 70-9-98, the Board denied requests of the Air Freight Forwarders Association in Docket 22544 and Muzak, a division of Wrather Corporation in Docket 22545 to suspend the September 25 proposal.

By motion filed this date, the Air Freight Forwarders Association requests expedited decision without receiving answers from other interested parties with respect to a petition it concurrently filed requesting reconsideration of Order 70-9-98 or request for attachment of conditions. 1/ The thrust of the forwarders' petition is that:

1. The Board's actions are alleged to grant REA new operating authority presumably stemming from the revisions in the rate structure which has been permitted to become effective pending investigation by reason of the Board's denial of requests for suspension,

1/ The motion and petition are accompanied by a certificate of service reciting service by mail on September 24, together with telephonic advice to REA and the airlines.

2. The Board's order was in disregard of its regulations requiring justification by the airlines for the tariff filing,

3. The Board's order failed to include findings with respect to the impact of the tariff on the forwarders in terms of both the rates and priority accorded express service, and

4. The Board's order contains inadequate findings as to the legality of negotiated rates for a service in competition with the forwarders.

The Board has concluded to grant the forwarders' motion for expedited decision on its petition for reconsideration herein. The Board has considered the petition of the Air Freight Forwarders Association and all relevant matters before it and the petition is denied herein.

The forwarders' contentions are considered seriatim, below.

Firstly, there was no basis for the contention that REA is being granted new operating authority through the tariff revisions. While the new tariff will make REA more competitive at the higher weight breaks, REA's basic operating authority has never been subject to any weight limitation. 2/

Secondly, REA submitted justification in support of its tariff filing. While it is true that direct air carriers did not submit such a justification initially, the filing by REA amounted to substantial compliance with the regulation specifically in view of the fact that the main purpose of the tariff revisions was to provide relief to REA. Moreover, the matter of suspension for absence of initial justification is solely within the discretion of the Board.

Thirdly, the Board considered the impact of the tariff on the forwarders in terms of the rates and the priorities afforded express service, and finds the forwarders have not made a prima facie showing of sufficient facts to justify suspension on this ground. Finally, REA has always been considered to have a special relationship with the air carriers which permits the establishment of rates under the procedure followed here. Unlike the freight forwarders, REA has never been regarded as a shipper in relation to the direct air carriers.

The Board reaffirms its conclusions that the competitive impact of the interim proposal is not a basis for suspension in the present circumstances, and the Board has considered, as it did in the prior order, the allegations of the forwarders as to alleged diversion resulting from rates and priority,

2/ It should be noted that acceptance of the tariff does not purport to confer any additional authority on REA.

and finds no basis for reconsideration. It is further noted in this regard that the forwarders have not made any showing that the competitive rates against which they complain are prima facie unlawfully low.

We also dismiss the contention that negotiated rates are precluded by law. The procedures between REA and the participating direct carriers for the offering of air express service have not been revised, and while the agreement between REA and the carriers contains revisions as to terms for the division of revenues, this fact provides no basis to suspend the proposed rates.

Finally, the forwarders request in the alternative that, if the Board finds that its action is now legal, it condition any order allowing the interim tariff to remain in effect on an agreement being executed by the airlines whereby the air freight forwarders are accorded the same treatment under the Airlines Air Express Tariff as is now being accorded REA. This request for conditional approval raises new matters not previously proposed, and the Board will not attach such condition to this order. The Board cannot, by an ex parte condition, require the consummation of such an agreement, although the Board would consider any such agreement, if filed. Our action herein is without prejudice to a request that such issue be considered in pending investigations of REA's operations.

Accordingly, pursuant to the provisions of the Federal Aviation Act of 1958,

IT IS ORDERED THAT:

1. The motion of the Air Freight Forwarders for expedited decision on its Petition requesting reconsideration of Order 70-9-98 is granted,

2. The Petition of the Air Freight Forwarders Association for Reconsideration of Order 70-9-98 and its alternative request is hereby denied, and

3. A copy of this order shall be served upon all parties in Dockets 22387, 22544, and 22545.

This order will be published in the Federal Register.

By the Civil Aeronautics Board:

HARRY J. ZINK

Secretary

(SEAL)

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 8th day of December, 1970

Domestic Air Freight Rate Investigation	Docket 22859

ORDER INSTITUTING INVESTIGATION

By this order, the Board is instituting an investigation of current air freight rates and charges between points within the 48 contiguous states and the District of Columbia, and between those points, on the one hand, and Alaska and Hawaii, on the other hand, for scheduled services of the trunkline, all-cargo, and local service air carriers.

Today's domestic air freight rates have developed over the years chiefly from a series of tariff filings made by individual carriers. Since 1948, when the Board after an investigation (9 CAB 340) prescribed a minimum rate level, modified several times in subsequent decisions, only a limited number of investigations dealing with relatively narrow issues have been conducted.

The current rate structure consists of several types of rates, broadly divided between general and specific commodity rates. The current general commodity rates vary according to direction, westbound and southbound rates being at higher levels in numerous markets than rates in the opposite direction. General commodity rates are typically quoted for shipments of the following minimum poundages: under 100, 100, 1,000, 2,000, and 3,000 and over. In a few markets rates are quoted also for higher weights. The highest rates per pound are for shipments under 100 pounds, with lower rates published for successively higher "weight breaks." The differences among the rates at various weight breaks, also known as volume spreads, permit consolidations by forwarders. These volume spreads vary by distance, the spreads being greatest for the longest hauls.

A minimum charge per shipment assures carriers a minimum revenue for even the smallest shipment. The current minimum charge for shipments under general commodity rates typically is the charge for 50 pounds but not less than $10.00. For shipments at specific commodity rates, the minimum charge is typically the charge for 100 pounds but not less than $10.00.

Specific commodity rates, which apply to named commodities, are normally lower than the general commodity rates and for the most part are applicable to eastbound and northbound traffic. They are typically published for more shipment weights than general commodity rates; however, specifics are not usually quoted for shipments below 100 pounds. Other rates applying to individual commodities, but at premiums above general commodity rates, are so-called exception rates. These are quoted as percentages of the general commodity rates, 150 percent, 200 percent, etc. Relatively low general and specific commodity rates also exist for a few markets for export and import traffic. Until recently a number of carriers published sharply discounted rates for deferred service, involving mandatory delayed deliveries. However, most carriers have now canceled their deferred rates.

Other rates apply only to containerized shipments, involving varying discounts quoted for several sizes of containers. In addition to an allowance for the weight of the container itself, nominal "unitization" discounts from both general and specific commodity rates are offered for traffic having densities of seven pounds or more per cubic foot. An additional discount of 33 1/3 percent is typically offered on general commodity traffic having a density of over 7 pounds per cubic foot.

In the past two years the airlines have filed higher rates and charges that have affected both the level and structure of their rates. The minimum charge per shipment for most carriers has been raised from $6.00 to $10.00, subject to investigation (Order 68-8-77). Rates for larger shipments were raised by across-the-board increases as well as by increases varying with size of shipment and length of haul. General and specific commodity rates were raised by 7.5 percent, effective July 27, 1969, and subsequent dates, with a minimum increase of $1.00 per 100 pounds in specific commodity rates. Approximately a year later, the carriers effected rate increases between $1.00 and $1.50 per 100 pounds, depending upon distance, not exceeding 10 percent for general commodity rates, for shipments with a minimum weight of 100 pounds. Rates for smaller shipments were also increased and rates at the 1,000-pound weight break were raised for certain lengths of haul. Rates for shipments of 5,000 pounds and over were increased by cancellation of general commodity weight breaks for those weights.

The air transportation of freight in scheduled service has for a number of years been expanding rapidly. The volume of freight transported in the domestic scheduled services of the trunk and all-cargo carriers, 14 million revenue ton-miles in 1946, increased to 1,813 million in 1969, by almost 130 fold. The increase from year to year for the 10-year period 1960-1969 has averaged 17 percent. The increase has been particularly sharp for the traffic carried in all-cargo aircraft, which now accounts for the bulk of the total domestic volume of air freight, 61 percent for the 12 months ended June 30, 1970.

The carriers, however, have for a number of years reported that domestic all-cargo aircraft services have generally been conducted at operating losses. For only two 12-month periods since 1963 (those ended December 31, 1966, and June 30, 1967) have the carriers reported that operating revenues from such services, including a minor proportion of mail and express, have exceeded operating expenses. For the 12 months ended June 30, 1970, domestic trunk and all-cargo carriers reported operating revenues of $254 million and operating expenses of over $281 million, resulting in an operating loss of $27 million. The loss for the comparable period for the previous year was $21 million.

In these circumstances and upon consideration of all relevant factors, the Board finds that the current rates and charges, and the provisions relating thereto, for scheduled air freight services of trunkline, all-cargo and local service carriers within the 48 contiguous states and the District of Columbia, and between those points, on the one hand, and Alaska and Hawaii, on the other hand, may be unjust, unreasonable, unjustly discriminatory, unduly preferential, or unduly prejudicial, or otherwise unlawful, and should be investigated. This investigation will involve airport-to-airport, local and joint transportation rates and will not cover rates for pick-up and delivery services or accessorial services. The scope of this investigation will include both the level and the structure of air freight rates including a determination of the appropriate recognition to be given to the costs of the carriage in all-cargo as well as in combination aircraft. 1/ The ordering paragraphs delineate in detail the tariffs and provisions within the scope of this investigation.

1/ The structure aspect of the proceedings will involve, inter alia, such matters as appropriate discounts for specific commodity rates, distance taper, discounts for weight (weight breaks) and density, and container unitization. In addition, it will consider such treatment to be given the number of pieces in a shipment. Docket 19797, Rule of substitution of other service for air transportation, and Docket 19923, Air freight tariff liability and claims rules and practices, will be completed in due course and we do not anticipate that the issues therein will be retried in the investigation instituted by this order. In the interest of reaching timely decision on other pending cargo rate matters, we intend that Docket 20398, Minimum charges per shipment of air freight, Docket 21474, In the matter of air freight rates on live animals and birds, and Docket 22157, Increased freight rates proposed by United Air Lines, Inc., similarly be processed to final decision. However, the matters in issue in these three proceedings may prove to be very closely related to the issues involved in the general investigation and, therefore, we are including in this investigation the tariffs involved in such dockets. The rates herein set for investigation to and from Alaska and Hawaii will be only those involving the chief gateways: Anchorage, Fairbanks, Juneau, and Ketchikan for Alaska, and Hilo and Honolulu for Hawaii. Rates between Alaska and Hawaii will also be included in the investigation.

The Board has under investigation in Docket 21866, Domestic Passenger-Fare Investigation, among other things, the matters of aircraft depreciation, leased aircraft, deferred federal income taxes, and rate of return. We intend that the principles decided on these matters in the foregoing proceeding will be applied in the instant investigation subject to contentions to the contrary.

We would observe that meaningful study of air freight rates is hindered, if not precluded, by the lack of necessary factual data. Traffic, revenue, and cost data are reported by the carriers essentially on a domestic system basis. Traffic data are limited to tons enplaned by station and system ton-miles carried. Data are not reported to the Board as to the kinds of commodities carried, the number of shipments, number of pieces, volume by weight breaks, etc. A breakout between traffic carried at general commodity rates and specific commodity rates is not available.

Cost data are by and large limited to the over-all operating costs of the all-cargo services and, without a good deal of the statistical data enumerated above, not much can be done by way of more detailed costing, for example, of handling small as compared with large shipments. We know that the various carriers maintain their own records in varying detail and that they have attempted some cost studies. However, these data and studies are not generally available throughout the industry and they are probably far from uniform as among the carriers.

We would expect that, for the purposes of this investigation, current data on costs of service and on the characteristics and volumes of air freight traffic will be developed by the carriers prior to the hearings. This information might well be prepared on the basis of representative samples. The Board, however, also recognizes a continuing need for regularly reported statistics on air freight movements including origination and destination data and for data on costs of transporting and handling air freight. We shall utilize appropriate rulemaking procedures to establish necessary reports apart from this investigation.

The Board will also expect the carriers to submit statistical studies in the course of the instant investigation indicating the experienced effects of rate changes upon the volume of traffic. Such studies are a prerequisite to an intelligent evaluation of the effect of rates on the movement of traffic.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204, 403, 404, and 1002 thereof,

IT IS ORDERED THAT:

1. An investigation is instituted to determine whether the rates, charges and/or provisions (other than (a) those rates, charges or provisions under investigation in Dockets 19797 and 19923, and/or (b) those provisions which are specifically excluded in Appendix A hereof), appearing in the tariffs, including subsequent revisions and reissues thereof, enumerated in Note 2 through Note 26 of Appendix A to the extent they apply:

(a) between points in the 48 contiguous states, and between points in the 48 contiguous states and the District of Columbia,

- or -

(b) between points in the 48 contiguous states, or the District of Columbia, on the one hand, and Anchorage, Fairbanks, Ketchikan or Juneau, Alaska, on the other,

- or -

(c) between points in the 48 contiguous states, or the District of Columbia, or Anchorage, Fairbanks, Ketchikan or Juneau, Alaska, on the one hand, and Hilo or Honolulu, Hawaii, on the other,

for or on behalf of the carriers shown in Note 1 of Appendix A, and rules, regulations, and practices affecting such rates, charges and/or provisions (other than (a) those rates, charges or provisions under investigation in Dockets 19797 and 19923, and/or (b) those provisions which are specifically excluded in Appendix A hereof), are or will be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and if found to be unlawful, to determine and prescribe the lawful rates, charges and/or provisions and rules, regulations, or practices affecting such rates, charges and/or provisions;

2. The investigation be assigned for hearing before an examiner or examiners of the Board at a time and place hereafter to be designated; and

3. A copy of this order will be served upon the carriers listed in Appendix A, Note 1, which are hereby made parties to this proceeding.

This order will be published in the Federal Register.

By the Civil Aeronautics Board:

HARRY J. ZINK
Secretary

(SEAL)

Note 1:

	See Notes
Airlift International, Inc.	2, 3, 4, 5, 6, 8, 10, 11, 12, 13
Alaska Airlines, Inc.	2, 4, 5
Allegheny Airlines, Inc.	2, 4, 10, 12, 13
American Airlines, Inc.	2, 3, 4, 5, 6, 8, 10, 11, 12, 13
Braniff Airways, Inc.	2, 4, 5, 6, 8, 10, 11, 12, 13, 14, 15
Continental Air Lines, Inc.	2, 3, 4, 5, 6, 8, 10, 11, 12, 13, 16
Delta Air Lines, Inc.	2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13
Eastern Air Lines, Inc.	2, 4, 5, 6, 8, 10, 12, 13, 17
Frontier Airlines, Inc.	2, 3, 4, 5, 10, 11, 18
Hughes Air Corp. d/b/a Air West	2, 4, 5, 10, 11, 12, 13
Mohawk Airlines, Inc.	2, 4, 9, 10, 11, 12, 13, 19
National Airlines, Inc.	2, 4, 5, 6, 10, 11, 12, 13
North Central Airlines, Inc.	2, 4
Northeast Airlines, Inc.	2, 4, 5, 10, 11, 12, 13
Northwest Airlines, Inc. Also operating as Northwest Orient Airlines	2, 3, 4, 5, 6, 7, 8, 10, 12, 13
Ozark Air Lines, Inc.	2, 4, 5, 10, 11, 12, 13
Pan American World Airways, Inc.	10, 11, 12, 13
Piedmont Aviation, Inc.	2, 4, 10, 12, 13, 21
Seaboard World Airlines, Inc.	2, 3, 4, 5, 6, 22
Southern Airways, Inc.	2, 4, 23
Texas International Airlines, Inc.	2, 4, 7, 10, 11
The Flying Tiger Line Inc.	2, 3, 4, 5, 6, 8, 10, 11, 12, 13
Trans World Airlines, Inc.	2, 3, 4, 5, 6, 7, 8, 10, 12, 13
United Air Lines, Inc.	2, 3, 4, 5, 6, 7, 8, 10, 12, 13, 24, 25, 26.
Western Air Lines, Inc.	2, 3, 4, 5, 6, 7, 10, 11, 12, 13
Wien Consolidated Airlines, Inc.	2, 4

Note 2:

Tariff C.A.B. No. 8 (Agent J. Aniello series) issued by Airline Tariff Publishers, Inc., Agent:

All rates, charges and provisions except the provisions of Rule Nos. 12, 13, 14, 35 and 60.

Note 3:

Tariff C.A.B. No. 26 (Agent J. Aniello series) issued by Airline Tariff Publishers, Inc., Agent:

All rates, charges and provisions except the provisions of Rule No. 24.

Note 4:

Tariff C.A.B. No. 96 issued by Airline Tariff Publishers, Inc., Agent:

The provisions of Rule Nos. 50 and 54

Note 5:

Tariff C.A.B. No. 115 issued by Airline Tariff Publishers, Inc., Agent:

All rates, charges and provisions except the provisions of Rule Nos. 13, 14, 18 and 20.

Note 6:

Tariff C.A.B. No. 131 issued by Airline Tariff Publishers, Inc., Agent:

All rates, charges and provisions except the provisions of Rule Nos. 14 and 17.

Note 7:

Tariff C.A.B. No. 140 issued by Airline Tariff Publishers, Inc., Agent:

All rates, charges and provisions, except Rule No. 65.

Note 8:

Tariff C.A.B. No. 141 issued by Airline Tariff Publishers, Inc., Agent:

All rates, charges and provisions except the provisions of Rule Nos. 65 and 90.

Note 9:

Tariff C.A.B. No. 150 issued by Airline Tariff Publishers, Inc., Agent:

All rates, charges and provisions.

Note 10:

Tariff C.A.B. No. 193 issued by International Air Traffic Tariffs Corp., Agent:

The provisions of Rule Nos. 4(E) and 4(L)(1).

Note 11:

Tariff C.A.B. No. 351 issued by International Air Traffic Tariffs Corp., Agent:

All rates, charges and provisions.

Note 12:

Tariff C.A.B. No. 364 issued by International Air Traffic Tariffs Corp., Agent:

All rates, charges and provisions except the provisions of Rule Nos. 45 and 50.

Note 13:

Tariff C.A.B. No. 400 issued by International Air Traffic Tariffs Corp., Agent:

All rates, charges and provisions except the provisions of Rule No. 28.

Note 14:

Tariff C.A.B. No. 146 issued by Braniff Airways, Inc.:

All rates, charges and provisions.

Note 15:

Tariff C.A.B. No. 169 issued by Braniff Airways, Inc.:

All rates, charges and provisions.

Note 16:

Tariff C.A.B. No. 45 issued by Continental Air Lines, Inc.:

All rates, charges and provisions.

Note 17:

Tariff C.A.B. No. 287 issued by Eastern Air Lines, Inc.:

All rates, charges and provisions.

Note 18:

Tariff C.A.B. No. 52 issued by Frontier Airlines, Inc.:

All rates, charges and provisions.

Note 19:

Tariff C.A.B. No. 38 issued by Mohawk Airlines, Inc.:

All rates, charges and provisions.

Note 20:

(Intentionally not used)

Note 21:

Tariff C.A.B. No. 23 issued by Piedmont Aviation, Inc.:

All rates, charges and provisions.

Note 22:

Tariff C.A.B. No. 21 issued by Seaboard World Airlines, Inc.:

All rates, charges and provisions.

Note 23:

Tariff C.A.B. No. 30 issued by Southern Airways, Inc.:

All rates, charges and provisions.

Note 24:

Tariff C.A.B. No. 36 issued by United Air Lines, Inc.:

Note 25:

Tariff C.A.B. No. 164 issued by United Air Lines, Inc.:

All rates, charges and provisions.

Note 26:

Tariff C.A.B. No. 302 issued by United Air Lines, Inc.:

Order 70-12-125

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D.C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D.C.
on the 22nd day of December, 1970

EXPRESS SERVICE INVESTIGATION	Docket 22388

CONSOLIDATION ORDER

Motions have been filed to consolidate in the above-entitled proceeding the following applications: Aero Special Air Freight Inc., Docket 22862; Airborne Freight Corporation, Docket 22789; Air-Land Freight Consolidators, Inc., Docket 22782; BCR-Air Freight Company, Inc., Docket 22875*; Circle Airfreight Corporation, Docket 22825; Domestic Air Express, Inc., Docket 22804; Emery Air Freight Corporation, Docket 22785; Express Air Freight, Inc., Docket 22783**; Interjet Cargo System, Inc., Docket 22799; Novo Airfreight Corporation, Docket 22786; Profit By Air, Inc., Docket 22796; REA Express, Inc., Docket 22787; Republic Airmodal Inc., Docket 22843*; Shulman Air Freight, Inc., Docket 22790***; Southern Pacific Air Freight, Inc., Docket 22806; Surf-Air, Inc., Docket 22811; Wells Fargo Air Express, Inc., Docket 22801; and WTC Air Freight, Docket 22778.

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* Since these applications and motions to consolidate were not filed within the time limits prescribed by Rule 37 of the Rules of Practice, they were accompanied by motions for leave to file otherwise unauthorized documents. The Board is of the opinion that the motions establish good cause. It will, therefore, accept the applications and motions to consolidate.

** This applicant has applied for approval, under Section 215.3 of the Board's Economic Regulations, for a change of name from Express Air Freight, Inc., to Santa Fe Air Freight Company.

*** This applicant presently operates under the name of Shulman, Inc. By application filed with the Board it asks approval to operate under the corporate name Shulman Air Freight, Inc., as well as the trade names previously authorized by the Board.

ONLY COPY AVAILABLE

Upon consideration of the motions, it is found that the consolidation of the above-specified applications would be consistent with the purpose of this investigation*

ACCORDINGLY, IT IS ORDERED:

1. That the following applications be and they hereby are consolidated for hearing and decision: Aero Special Air Freight Inc., Docket 22802; Airborne Freight Corporation, Docket 22789; Air-Land Freight Consolidators, Inc., Docket 22804; [illegible] Freight Company, Inc., Docket 22875; Circle AirFreight Corporation, Docket 22803; Domestic Air Express, Inc., Docket 22804; Emery Air Freight Corporation, Docket 22785; Express Air Freight, Inc., Docket 22783; Interjet Cargo System, Inc., Docket 22799; Novo Air-freight Corporation, Docket 22786; Profit By Air, Inc., Docket 22796; REA Express, Inc., Docket 22797; Republic Airmodal Inc., Docket 22843; Shulman Air Freight, Inc., Docket 22790; Southern Pacific Air Freight, Inc., Docket 22808; Surf-Air, Inc., Docket 22811, Wells Fargo Air Express, Inc., Docket 22801; and WTC Air Freight, Docket 22778.

By the Civil Aeronautics Board:

HARRY J. ZINK

Secretary

(SEAL)

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* The applications all seek authority which is within the scope of the proceeding and consolidation will be conducive to the proper dispatch of the Board's business and to the ends of justice and will not unduly delay the proceeding.

NOTICE DATED JANUARY 18, 1971
UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

INVESTIGATION OF AIR EXPRESS RATES

DOCKET 22387

NOTICE TO ALL PARTIES:

By a letter dated January 6, 1971, REA Express, Inc. (REA) has requested that the date for filing its exhibits involving the separation of surface and air expenses and its evidence as to the return on investment issues be postponed by one month, i.e., until March 15, 1971, and that rebuttal evidence as to these exhibits shall be due April 1, 1971.

The Air Freight Forwarders Association (AFFA) and the air lines, in letters dated January 8, 1971 and January 15, 1971, respectively, oppose any postponement of the procedural dates.

REA's major reason for its request is that its expert on surface transportation costs, Mr. Gerald W. Fauth, is ill with hepatitis and has been restricted by his doctor to working half-days for six to eight weeks. The reasons cited for postponing the date for filing of evidence on the return issues are that the issues are complex and that Mr. Altschul, the expert REA has retained, has other commitments.

While REA has not requested any postponement of the hearing date, its proposed schedule, involving the submission of rebuttal exhibits after the date now scheduled for hearing (March 23, 1971) would be prejudicial to the other parties, and probably necessitate delay of the hearing in any event. The examiner considers it necessary to retain the date for commencement of the hearing, and, therefore, cannot accept any revision of the procedural schedule which would require changing that date or impede the orderly progress of the hearing.

On the other hand, in consideration of the complications caused by Mr. Fauth's illness, but not overlooking the resources otherwise available to a company as large as REA, the date for filing the affirmative exhibits and related testimony to be prepared by Mr. Fauth or under his supervision regarding the separation of air and surface expenses is hereby postponed until February 26, 1971; more specifically, the examiner and the other parties are to receive the said exhibits by that date. The rebuttal evidence and related testimony with respect to the said exhibits are to be received by the examiner and the other parties not later than March 19, 1971.

The request for postponement of the evidence relating to the return issues is considered without merit and is hereby denied.

Accordingly, the above request of REA for postponement of procedural dates is hereby denied except to the extent granted above with respect to the evidence and related testimony on the separation of surface and air expenses to be prepared by Mr. Fauth or under his supervision, and any evidence or testimony in rebuttal thereto. The procedural dates established at the prehearing conference continue to govern the submission of all other evidence.

* * *

By a separate letter dated January 15, 1971 the air lines call attention to certain omissions from the information responses filed by REA, in addition to the cost data material to be prepared by Mr. Fauth, and ask the examiner to direct REA to supply this information at the time direct exhibits are filed. Accordingly, the examiner hereby directs REA to submit by February 15, 1971, "the separate density of air and surface express shipments" (Appendix B to Prehearing Conference Report, item VI. A.) and "The relative amounts of terminal space assigned to surface and air express shipments" (Appendix B to Prehearing Conference Report, item VI. C.).

Milton H. Shapiro
Hearing Examiner

January 18, 1971

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

REA EXPRESS, INC., Petitioner, v. CIVIL AERONAUTICS BOARD, Respondent, AIRLINES PARTICIPATING IN AIR EXPRESS SERVICE, and AIR FREIGHT FORWARDING ASSOCIATION, Intervenors.	No. 35,474

MOTION OF THE CIVIL AERONAUTICS BOARD
TO DISMISS REA'S PETITION FOR REVIEW

The Civil Aeronautics Board, respondent herein, respectfully moves the Court to dismiss the petition for review filed by REA Express, Inc. (REA) on the ground that the only mature matter presented therein is moot by virtue of the issuance by the Board of Order 71-2-68 on February 12, 1971, reinstating for limited purposes the "Petition and Complaint" of REA. In support thereof, respondent respectfully shows the following:

1. REA's petition in this case seeks review of: Board Order 70-7-109 (J.A. 115), which instituted an investigation of rates for air express service; Board Order 70-7-110 (J.A. 126), which instituted a service investigation and also dismissed a "Petition and Complaint" which REA had filed on April 9, 1970 (J.A. 1); and Board Order 70-8-43, which denied REA's petition for reconsideration of the earlier orders (J.A. 186).

2. Air express service is a monopoly which has been performed for many years as a joint venture between REA and the scheduled air carriers. The operations are conducted pursuant to an Air Express Agreement and contemplate that REA will perform pickup and delivery ground services and certain administrative services while the carriers will provide air transportation. Tariffs prescribing the fares and charges for air express service are filed jointly by REA and the carriers while the divisions of the resultant air express revenues are determined by the contractual arrangement. The impending expiration of the air express agreement in June 1969 prompted the present controversy. The parties to the agreement, REA and the carriers, both were seriously re-evaluating their role in air express service. The carriers desired to retain their position as a joint venturer in the air express business while REA desired to take over the entire business in relation to the public, shipping in bulk at airline tariffs in the same manner as freight forwarders, preferably on a basis made retroactive to the filing of its "Petition and Complaint". Of course, any new agreement finally reached by the parties would still have required Board scrutiny and approval as being in the public interest, including an assessment of the competitive effects upon the air freight forwarders, or bulk consolidators. It was the very broad reform and long-range relief sought by REA in its "Petition and Complaint" that was to form the

basis for the two comprehensive investigations presently before the Board. 1/

3. The investigation initiated by Order 70-7-109 was instituted for the purpose of determining whether the rates for air express service filed by REA and the participating carriers are, or will be, unlawful, and if found to be unlawful, to determine and prescribe the lawful rates. The scope of that investigation includes the reasonableness of the divisions of rates and charges between REA and the carriers. Simultaneously with the institution of this investigation, the Board, by Order 70-7-110, instituted a second investigation, termed the Express Service Investigation (J.A. 126). The purpose of the second investigation was to explore the future role of express or priority cargo service in air transportation and was meant to be a broad review of many of the matters alleged by REA in its various pleadings. In denying REA's petition for reconsideration of the two orders instituting these investigations and in refusing to reinstate the Petition and Complaint of April 9, 1970, the Board made it clear that it took this action because the investigations encompass in broader scope the matters raised by REA in its "Petition and Complaint" (J.A. 194).

4. By its action in this Court REA has challenged the lawfulness of the Board's dismissal of its "Petition and Complaint" before the Board.

1/ This very brief and simple analysis of air express service is included herein to suggest to the Court the myriad problems presently before the Board in the two investigations. These problems are not involved in the present proceeding before the Court. See note 3 infra.

Pursuant to Rule 30(b) of the Federal Rules of Appellate Procedure, REA certified the issue in this case to be as follows:

> "Was it reversible error for the Civil Aeronautics Board to dismiss the Petition and Complaint of REA Express, Inc., in Docket 22090?" (REA letter of November 30, 1970.)

5. REA filed its brief in this Court on January 20, 1971. From that brief it now becomes clear for the first time that the gravamen of its petition is a contention that should the Board ultimately direct an adjustment of divisions of joint rates, pursuant to Section 1002(h) of the Federal Aviation Act of 1958 (49 U.S.C. 1482(h)), it will be unable to make such an adjustment retroactive to the date of REA's dismissed complaint. Since Section 1002(h) provides that the Board's power to require the adjustment of divisions cannot antedate "the date of filing the complaint or entry of order of investigation . . .", REA stresses that the practical effect of the Board's dismissal of its "Petition and Complaint" and the subsequent institution of the investigations is to deprive it of an opportunity for an adjustment of the divisions for this interim period between the filing of the complaint (April 9, 1970) and the date of the institution of the investigations (July 23, 1970)(Pet. Br., 13, 15).

6. Now that REA has articulated its true grievance, the Board has taken steps to afford the relief requested without the necessity of further litigation. By Order 71-2-68, dated February 12, 1971 (annexed hereto as Appendix A), the Board has reinstated the "Petition and Complaint" of REA for the sole purpose of preserving for Board determination the possibility

of a retroactive readjustment of the fare divisions from April 9, 1970. Revival of the dismissed complaint allows the Board to provide REA a retroactive readjustment of joint fare divisions back to April 9, 1970, the date of the filing of the REA "Petition and Complaint," should the Board otherwise determine in the pending investigation (1) that it has the power to determine the divisions between REA and the carriers, (2) that it has the power to compel a retroactive readjustment of such divisions, and (3) that such action would be "just, reasonable, and equitable" (Section 1002(h) of the Act (49 U.S.C. 1482(h)). Thus, insofar as the dismissal of REA's "Petition and Complaint" alone would have prevented the Board from giving relief to REA back to April 9, 1970, the Board has remedied the situation by the issuance of Order 71-2-68.[2/] Of course, any determination made by the Board to grant or withhold such relief in the pending investigations will be subject to judicial scrutiny under Section 1006 of the Act (49 U.S.C. 1486).

7. Since the Board has given REA the relief it is seeking from the Court, no purpose is served by further consideration of its petition for review.[3/] The petition for review is moot. The necessity for further

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2/ The Board stated in the order of reinstatement that it was not necessary to consider whether the dismissal of the "Petition and Complaint" would, as a matter of law, foreclose the possibility of retroactive relief from the date of filing (Appendix A, p. 1).

3/ REA's contention (Pet. Br., 16-18) concerning the supposed inadequacy of the Board's investigation of air express rates amounts to no more than a repetition of its argument that it is unable to get relief

(footnote continued)

proceedings has passed and the petition for review should be dismissed. 4/

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retroactive to the date of its complaint (See Pet. Br. 18-20). As we have pointed out above, the Board's latest order reinstates NEA's complaint and makes it eligible for a retroactive readjustment of joint fare divisions to April 9, 1970. NEA's claim that it was coerced into the present air express agreement (Pet. Br., 12) is also subject to full examination in the Board's rate investigation, as is the alleged illegality of the Board's use of its suspension power (Pet. Br. 14-16). Significant preliminary steps prior to hearing have already been completed in both investigations. Prehearing conferences have been held and procedural dates for responding to information requests, exchanging exhibits and written testimony, and for hearings have been scheduled. The hearing in the rate investigation will be held on March 23, 1971 and in the service investigation on July 6, 1971. When the Board takes final action on the basis of its investigation, that action will naturally be reviewable. But it is equally clear that until the Board has the opportunity to investigate these issues and makes determinations concerning them they are not properly before this Court for review. Myers v. Bethlehem Shipbuilding Corp., 303 U.S. 41 (1938); Toilet Goods Association v. Gardner, 387 U.S. 158 (1967).

4/ We believe that the pendency of a petition for review does not preclude the Board from taking this further action with respect to the matter under review to grant petitioner the relief requested. See, e.g., American Farm Lines v. Black Ball Freight Service, 397 U.S. 532 (1970); Northeast Airlines v. C.A.B., 345 F.2d 488 (C.A. 1, 1965); Anchor Line Limited v. F.M.C., 299 F.2d 124 (C.A.D.C. 1962); Frontier Airlines, Inc. v. C.A.B., 259 F.2d 808 (C.A.D.C. 1958). In various unreported decisions, review proceedings also have been dismissed at the Board's request after the Board had vacated the orders which had been challenged. E.g. ALPICO Airlines v. C.A.B., C.A.D.C. No. 13,055 (dismissed by order of December 17, 1963); City of Marion, Indiana v. C.A.B., C.A. 7, No. 15,746 (dismissed by order of December 6, 1966).

We note, however, that the Board issued its order subject to any permission which this Court may think necessary (See Appendix A, p. 2).

WHEREFORE respondent respectfully requests the Court to dismiss the petition for review without costs to either party.

Respectfully submitted,

/s/
R. Tenney Johnson
General Counsel
Civil Aeronautics Board

/s/
Gregory B. Hovendon
Attorney
Department of Justice

Dated: FEB 16 1971

Order 71-2-68

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D.C.
on the 12th day of February, 1971

PETITION AND COMPLAINT OF REA EXPRESS, INC.	Docket 22096
Revisions in air express rates and charges proposed by RAILWAY EXPRESS AGENCY, INCORPORATED AND PARTICIPATING AIR CARRIERS	Docket 22387

ORDER

By Orders 70-7-109 and 70-7-110, dated July 23, 1970 and Order 70-8-48, dated August 13, 1970, the Board, inter alia dismissed the Petition and Complaint of REA Express, Inc. in Docket 22096 and denied it reconsideration of such action. The investigations in Dockets 22387 and 22388 (Express Service Investigation) encompass in broader scope the matters raised by REA in its "Petition and Complaint" in Docket 22096. In our view the thrust of that "Petition and Complaint" is for broad reform and long-range relief relating to the existing air express agreement. That reform and relief are clearly the subject of the wide ranging investigations in Dockets 22387 and 22388, and do not require separate consideration solely on REA's terms.

REA has petitioned the United States Court of Appeals for the Second Circuit for review of the aforementioned Board Orders. In the brief filed by REA with the Court, however, a new issue has been raised by REA which had not previously been presented to or considered by the Board. REA asserts that under Section 1002(h) of the Act (49 U.S.C. 1482(h)) the legal effect of dismissing its "Petition and Complaint" and instituting the investigation was to make July 23, 1970, when the investigation was instituted, the earliest date on which a new retroactive division of fares could be made effective, instead of April 9, 1970, when REA's "Petition and Complaint" was filed.

In the present context it is not necessary for the Board to consider whether the dismissal of the "Petition and Complaint" would, as a matter of law, foreclose the possibility of retroactive relief from the date of filing. The "Petition and Complaint" was dismissed because the matters raised were covered by the investigations we ordered. The

Board had no intention of prejudicing REA's position regarding retroactive relief. Had such issue been previously presented to the Board, we would have taken our present action at that time.

For these reasons, without prejudging the issues presently under consideration in the rate investigation, we think it appropriate to reinstate the "Petition and Complaint" of REA in Docket 22096 for the limited purpose of preserving the Board's legal option to grant relief retroactive to the filing date thereof, April 9, 1970. In addition, we shall consolidate this limited reinstatement with the investigation in Docket 22387. We take no position here on the need for such relief or on the Board's power to grant such relief in the case as presently constituted. It is our intention only to preserve such legal option should we decide to exercise such under proper circumstances.

The present action of the Board will modify an order presently before the United States Court of Appeals for the Second Circuit on petition for review. We shall, therefore, condition the present action to make it subject to any necessary permission of the Court.

Accordingly, pursuant to the provisions of the Federal Aviation Act of 1958, and particularly Sections 204, 1001, 1002 and 1005 thereof,

IT IS ORDERED THAT:

1. The Petition and Complaint of REA Express, Inc., in Docket 22096 be and hereby is reinstated solely for the purpose of preserving the date of filing subject to such approval as may be deemed necessary by the United States Court of Appeals for the Second Circuit;

2. Such limited reinstatement of the Petition and Complaint be and hereby is consolidated into the investigation in Docket 22387; and

3. For all other purposes, the Petition and Complaint of REA remains finally denied.

By the Civil Aeronautics Board:

HARRY J. ZINK

Secretary

(SEAL)

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

REA EXPRESS, INC., Petitioner, v. CIVIL AERONAUTICS BOARD, Respondent, AIRLINES PARTICIPATING IN AIR EXPRESS SERVICE, and AIR FREIGHT FORWARDING ASSOCIATION, Intervenors.	No. 35,474

CERTIFICATE OF SERVICE

I hereby certify that I have, this day, served by mail, a Notice and Motion of the Civil Aeronautics Board to Dismiss REA's Petition for Review on the following:

Arthur M. Wiechart, Esq.
219 East 42nd Street
New York, New York 10017

Russell S. Bernhard, Esq.
MacLeay, Lynch, Bernhard & Gregg
1625 K Street, N.W.
Washington, D.C. 20006

Louis P. Haffer, Esq.
1730 Rhode Island Avenue, N.W.
Washington, D.C. 20036

/s/
Warren L. Sharfman
Associate General Counsel
Litigation and Research

Dated: [illegible]

289(a)
ORDER DISMISSING PETITION FOR
REVIEW FOR MOOTNESS

7 3/15/71 3574

UNITED STATES COURT OF APPEALS

Second Circuit

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the fifteenth day of March, one thousand nine hundred and seventy-one.

Rea Express, Inc.,

Petitioner,

v.

Civil Aeronautics Board,

Respondent,

Air Freight Forwarders Association, Participating Airlines,

Intervenors.

It is hereby ordered that the motion made herein by counsel for the respondent, Civil Aeronautics Board, to dismiss the Petition for Review of an order of the Civil Aeronautics Board for mootness

by notice of motion dated

be and it hereby is granted without costs.

A. DANIEL FUSARO
Clerk

* * * * *

BEFORE : HON. LEONARD P. MOORE

HON. J. JOSEPH SMITH
Circuit Judges

HON. WILLIAM H. TIMBERS
District Judge

GPO 864-718

BEFORE THE
CIVIL AERONAUTICS BOARD
WASHINGTON, D.C.

Investigation of Air Express Rates	)	Docket 22387

MOTION OF REA EXPRESS TO
INCLUDE PRIORITY STUDY

REA Express, Inc. hereby moves the Examiner to order that the participating airlines in this proceeding submit for the record in this case the priority study which the airlines have been directed to perform in the Express Service Investigation, Docket 22388.

A key element in the airline Air Express cost exhibits presented in this proceeding by both the Bureau of Economics and the participating carriers is the priority weighting attached to Air Express. The question of the practical application of priority to Air Express traffic thus has considerable importance for the record in this case.

In the Express Service Investigation, Docket 22388, the airlines will supply the following information for six trunk carriers and six local service carriers:

> "For the fourth (4th) week in March 1971 the total number of scheduled passenger flights (by departure time and city-pair for each 24-hour day period) which departed without capacity to carry cargo in addition to that on board the aircraft."

This study should also be made a part of the record in this proceeding for the purpose of evaluating the priority feature of Air Express to which such great importance has been assigned by the airlines and the Bureau. Since the study is already being performed by the airlines in Docket 22388 it will require scant additional effort for the carriers to present the results and a sponsoring witness in this proceeding. No substantial delay should result from inclusion of the study in this case because the survey is planned for the week of March 22. At most, it may be necessary to set an additional few hours of hearing after the close of the hearing on the rest of the evidence in this case. This need not result in any delay in the procedural dates for hearing and briefing.

For the reasons stated above, REA Express, Inc. respectfully requests that the Examiner order the participating airlines to present the results of the priority study being

performed in Docket 22388, together with a sponsoring witness, for the record in this proceeding.

Respectfully submitted,

LEIBMAN, WILLIAMS, BENNETT,
BAIRD AND MINOW

By Elroy H. Wolff

Attorneys for REA Express, Inc.

Of Counsel:

John J. C. Martin, Esq.
REA Express, Inc.
219 East 42nd Street
New York, New York 10017

CERTIFICATE OF SERVICE

I hereby certify that I have this day served by mail a copy of the foregoing Motion upon all parties to this proceeding.

Elroy H. Wolff

March 22, 1971

COMPARISON OF PROPOSED TARIFF IN TOP 15 MARKETS WITH COMPETITIVE RATES

Direction & Carrier	NYC-BOS 186 Mi.	NYC-WAS 228 Mi.	CHI-DTT 235 Mi.	CHI-MSP 350 Mi.	NYC-CLE 424 Mi.
5 Pound Shipment					
Air Express (Both Directions)					
Suspended Tariff	$ 8.68	$ 8.68	$ 8.68	$ 8.68	$ 8.68
Interim Tariff	8.68	8.68	8.68	8.68	8.68
Proposed Cost Tariff 1/	8.98	8.98	8.98	9.10	9.10
Eastbound					
Average: Six Forwarders 2/	11.90	13.34 4/	12.34	12.78 4/	12.02
Lowest Forwarder	10.00	11.97	10.00	11.47	10.00
Airlines 5/	20.65	20.50	17.85	17.60	20.25
(Carrier)	(AA)	(AA)	(AA)	(NW)	(AA)
Westbound					
Average: Six Forwarders 2/	12.02	12.80	12.38 4/	12.34	11.90
Lowest Forwarder	10.00	11.97	10.00	10.00	10.00
Airlines 5/	20.65	20.50	17.85	17.60	20.25
(Carrier)	(AA)	(AA)	(AA)	(NW)	(AA)

COMPARISON OF PROPOSED TARIFF IN TOP
15 MARKETS WITH COMPETITIVE RATES

Direction & Carrier	DTT-NYC 508 Mi.	CHI-PHL 678 Mi.	CHI-NYC 740 Mi.	NYC-ATL 760 Mi.	MSP-NYC 1028 Mi.
Pound Shipment					
Air Express (Both Directions)					
Suspended Tariff	$ 8.68	$ 8.68	$ 8.68	$ 8.68	$ 8.68
Interim Tariff	8.68	8.68	8.68	8.68	8.68
Proposed Cost Tariff 1/	9.16	9.27	9.27	9.33	9.44
Eastbound					
Average: Six Forwarders 2/	12.68 4/	11.77	12.02	12.02	12.72 4/
Lowest Forwarder	10.00	10.00	10.00	10.00	10.00
Airlines 5/	19.75	19.10	10.60	18.85	19.50
(Carriers)	(AA)	(UA)	(AA)	(EA)	(NW)
Westbound					
Average: Six Forwarders 2/	12.48	11.77	11.90	11.91	12.57
Lowest Forwarder	10.00	10.00	10.00	10.00	10.00
Airlines 5/	19.75	19.10	20.60	18.85	19.50
(Carrier)	(AA)	(UA)	(AA)	(EA)	(NW)

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Direction & Carriers	NYC-MIA 3/ 1093 Mi.	NYC-DAL 1384 Mi.	CHI-LAX 1746 Mi.	NYC-LAX 2474 Mi.	NYC-SFO 2587 Mi.
5 Pound Shipments					
Air Express (Both Directions)					
Suspended Tariff	$ 8.68	$ 8.68	$ 8.68	$ 8.68	$ 8.68
Interim Tariff	8.68	8.68	8.68	8.68	8.68
Proposed Cost Tariff 1/	9.51	9.68	9.85	10.26	10.37
Eastbound					
Average: Six Forwarders 2/	12.68 4/	12.60	11.84	12.13	12.22
Lowest Forwarder	10.00	10.00	10.00	10.00	10.00
Airlines 5/ (Carriers)	19.73 (EA)	22.93 (AA)	23.65 (AA)	32.38 (AA)	32.65 (AA)
Westbound					
Average: Six Forwarders 2/	12.58 4/	12.40	11.85	12.02	12.10
Lowest Forwarder	10.00	10.00	10.00	10.00	10.00
Airlines 5/ (Carriers)	19.73 (EA)	22.93 (AA)	23.65 (AA)	32.38 (AA)	34.35 (AA)

COMPARISON OF PROPOSED TARIFF IN TOP
15 MARKETS WITH COMPETITIVE RATES

[illegible] Carrier	NYC-BOS 186 Mi.	NYC-WAS 228 Mi.	CHI-DTT 235 Mi.	CHI-MSP 350 Mi.	NYC-CLE 424 Mi.
[illegible] Shipment					
[illegible] Express (Both Directions)					
[illegible] Tariff	$10.72	$10.72	$10.72	$10.72	$10.72
[illegible] Tariff	8.68	8.68	8.68	8.68	8.68
[illegible] Cost [illegible] 1/	9.44	9.44	9.44	9.68	9.68
[illegible]					
[illegible]: Six [illegible] 2/	15.01	17.41 4/	15.42	15.58 4/	15.13
[illegible] Forwarder	12.70	15.75	12.70	12.00	12.70
[illegible] 3/	20.65	20.50	17.85	17.60	20.25
[illegible])	(AA)	(AA)	(AA)	(NW)	(AA)
[illegible]					
[illegible]: Six [illegible] 2/	15.13	15.44	15.72 4/	15.42	15.02
[illegible] Forwarder	12.70	12.00	12.70	12.70	12.70
[illegible] 3/	20.65	20.50	17.85	17.60	20.25
[illegible])	(AA)	(AA)	(AA)	(NW)	(AA)

COMPARISON OF PROPOSED TARIFF IN TOP 15 MARKETS WITH COMPETTITIVE RATES

Direction & Carrier	DTT-NYC 508 Mi.	CHI-PHL 678 Mi.	CHI-NYC 740 Mi.	NYC-ATL 760 Mi.	MSP-NYC 1028 Mi.
10 Pound Shipment					
Air Express (Both Directions)					
Suspended Tariff	$10.72	$10.72	$10.72	$10.72	$10.72
Interim Tariff	8.68	8.68	8.68	8.68	8.83
Proposed Cost Tariff 1/	9.79	10.03	10.03	10.15	10.37
Eastbound					
Average: Six Forwarders 2/	16.02 4/	14.89	15.14	15.14	16.07 4/
Lowest Forwarder	12.70	12.70	12.70	12.70	12.70
Airlines 5/	19.75	19.10	20.60	18.85	19.50
(Carriers)	(AA)	(UA)	(AA)	(EA)	(NW)
Westbound					
Average: Six Forwarders 2/	15.58	14.89	15.02	15.02	15.78
Lowest Forwarder	12.70	12.70	12.70	12.70	12.70
Airlines 5/	19.75	19.10	20.60	18.85	19.50
(Carrier)	(AA)	(UA)	(AA)	(EA)	(NW)

COMPARISON OF PROPOSED TARIFF IN TOP
15 MARKETS WITH COMPETITIVE RATES

[illegible] Carriers	NYC-MIA 3/ 1093 Mi.	NYC-DAL 1384 Mi.	CHI-LAX 1746 Mi.	NYC-LAX 2474 Mi.	NYC-SFO 2387 Mi.
[illegible] Rates					
[illegible] (Both Directions)					
[illegible] Tariff	$10.72	$10.72	$10.72	$10.72	$10.72
[illegible] Tariff	9.34	9.95	10.72	10.72	10.72
[illegible] Cost 1/	10.50	10.84	11.19	12.01	12.24
[illegible]					
[illegible]: Six [illegible] 2/	16.02 4/	15.78	14.98	15.29	15.38
[illegible] Forwarder	12.70	12.70	12.70	12.70	12.70
[illegible] 5/ [illegible] Carriers)	19.73 (EA)	22.93 (AA)	23.65 (AA)	32.38 (AA)	34.35 (AA)
[illegible] Eastbound					
Average: Six Forwarders 2/	15.93 4/	15.55	14.99	15.13	15.27
Lowest Forwarder	12.70	12.70	12.70	12.70	12.70
Airlines 5/ (Carriers)	19.73 (EA)	22.93 (AA)	23.65 (AA)	32.38 (AA)	34.35 (AA)

COMPARISON OF PROPOSED TARIFF IN TOP 15 MARKETS WITH COMPETITIVE RATES

Direction & Carrier	NYC-BOS 186 Mi.	NYC-WAS 228 Mi.	CHI-DTT 235 Mi.	CHI-MSP 350 Mi.	NYC-CLE 424 Mi.
25 Pound Shipment					
Air Express (Both Directions)					
Suspended Tariff	$11.52	$11.52	$11.52	$12.01	$12.01
Interim Tariff	8.68	8.68	8.68	8.83	8.83
Proposed Cost Tariff 1/	12.36	12.36	12.36	12.95	12.95
Eastbound					
Average: Six Forwarders 2/	17.79	20.30 4/	18.03	18.90 4/	18.06
Lowest Forwarder	14.94	17.63	14.94	17.45	15.22
Airlines 5/	20.65	20.50	17.85	17.60	20.25
(Carrier)	(AA)	(AA)	(AA)	(NW)	(AA)
Westbound					
Average: Six Forwarders 2/	17.91	18.59	18.40 4/	18.03	17.94
Lowest Forwarder	14.94	16.22	14.94	14.94	15.22
Airlines 5/	20.65	20.50	17.85	17.60	20.25
(Carrier	(AA)	(AA)	(AA)	(NW)	(AA)

COMPARISON OF PROPOSED TARIFF IN TOP
15 MARKETS WITH COMPETITIVE RATES

Direction & Carrier	DTT-NYC 508 Mi.	CHI-PHL 678 Mi.	CHI-NYC 740 Mi.	NYC-ATL 760 Mi.	MSP-NYC 1028 Mi.
25 Pound Shipment					
Air Express (Both Directions)					
Suspended Tariff	$12.25	$12.75	$12.75	$13.06	$13.56
Interim Tariff	9.65	11.28	11.28	11.59	12.71
Proposed Cost Tariff 1/	13.24	13.81	13.81	14.10	14.69
Eastbound					
Average: Six Forwarders 2/	19.09 4/	19.49	18.78	18.75	20.38 4/
Lowest Forwarder	15.22	15.47	15.47	15.22	16.15
Airlines 5/ (Carriers)	19.75 (AA)	19.10 (UA)	20.60 (AA)	18.85 (EA)	19.50 (NW)
Westbound					
Average: Six Forwarders 2/	18.54	18.49	18.58	18.72	19.89
Lowest Forwarder	15.22	15.47	15.47	15.59	16.15
Airlines 5/ (Carrier)	19.75 (AA)	19.10 (UA)	20.60 (AA)	18.85 (EA)	19.50 (NW)

COMPARISON OF PROPOSED TARIFF IN TOP
15 MARKETS WITH COMPETITIVE RATES

Direction & Carriers	NYC-MIA 3/ 1093 Mi.	NYC-DAL 1384 Mi.	CHI-LAX 1746 Mi.	NYC-LAX 2474 Mi.	NYC-SFO 2587 Mi.
25 Pound Shipments					
Air Express (Both Directions)					
Suspended Tariff	$13.87	$14.86	$15.97	$18.56	$19.11
Interim Tariff	13.58	14.60	15.97	18.56	19.11
Proposed Cost Tariff 1/	14.98	15.86	16.72	18.77	19.35
Eastbound					
Average: Six Forwarders 2/	20.71 4/	20.59	19.79	21.36	21.74
Lowest Forwarder	16.32	16.32	16.64	17.29	17.45
Airlines 5/	19.73	22.93	23.65	32.38	34.35
(Carriers)	(EA)	(AA)	(AA)	(AA)	(AA)
Westbound					
Average: Six Forwarders 2/	20.73 4/	20.96	20.85	22.36	22.80
Lowest Forwarder	16.15	16.97	17.45	18.43	18.64
Airlines 5/	19.73	22.93	23.65	32.38	34.35
(Carriers)	(EA)	(AA)	(AA)	(AA)	(AA)

COMPARISON OF PROPOSED TARIFF IN TOP
15 MARKETS WITH COMPETITIVE RATES

Direction & Carrier	NYC-BOS 186 Mi.	NYC-WAS 228 Mi.	CHI-DTT 235 Mi.	CHI-MSP 350 Mi.	NYC-CLE 424 Mi.
50 Pound Shipment					
Air Express (Both Directions)					
Suspended Tariff	$14.47	$14.47	$14.47	$15.48	$15.48
Interim Tariff	8.68	8.68	8.68	11.33	11.33
Proposed Cost Tariff 1/	14.51	14.51	14.51	15.67	15.67
Eastbound					
Average: Six Forwarders 2/	20.58	22.94 4/	20.54	21.32 4/	21.17
Lowest Forwarder	17.26	19.60	17.26	19.30	18.02
Airlines 5/ (Carrier)	20.65 (AA)	20.50 (AA)	17.85 (AA)	17.60 (NW)	20.25 (AA)
Westbound					
Average: Six Forwarders 2/	20.70	21.01	20.91 4/	20.54	21.22
Lowest Forwarder	17.26	18.68	17.26	17.26	18.02
Airlines 5/ (Carrier)	20.65 (AA)	20.50 (AA)	17.85 (AA)	17.60 (NW)	20.25 (AA)

COMPARISON OF PROPOSED TARIFF IN TOP 15 MARKETS WITH COMPETITIVE RATES

Direction & Carrier	DTT-NYC 508 Mi.	CHI-PHL 678 Mi.	CHI-NYC 740 Mi.	NYC-ATL 760 Mi.	MSP-NYC 1028 Mi.
50 Pound Shipment					
Air Express (Both Directions)					
Suspended Tariff	$15.98	$16.99	$16.99	$17.62	$18.63
Interim Tariff	13.17	16.28	16.28	17.10	18.26
Proposed Cost Tariff 1/	16.25	17.42	17.42	18.00	19.16
Eastbound					
Average: Six Forwarders 2/	22.21 4/	22.58	22.94	22.86	25.58 4/
Lowest Forwarder	18.02	18.68	18.68	18.02	20.50
Airlines 5/	19.75	19.10	20.60	18.85	19.50
(Carriers)	(AA)	(UA)	(AA)	(EA)	(NW)
Westbound					
Average: Six Forwarders 2/	21.61	22.41	22.61	22.97	25.14
Lowest Forwarder	18.02	18.68	18.68	18.99	20.50
Airlines 5/	19.75	19.10	20.60	18.85	19.50
(Carrier)	(AA)	(UA)	(AA)	(EA)	(NW)

COMPARISON OF PROPOSED TARIFF IN TOP
15 MARKETS WITH COMPETITIVE RATES

Direction & Carriers	NYC-MIA 3/ 1093 Mi.	NYC-DAL 1384 Mi.	CHI-LAX 1746 Mi.	NYC-LAX 2474 Mi.	NYC-SFO 2587 Mi.
50 Pound Shipments					
Air Express (Both Directions)					
Suspended Tariff	$19.27	$21.29	$23.40	$27.52	$28.71
Interim Tariff	19.07	20.96	23.40	27.67	29.20
Proposed Cost Tariff 1/	19.75	21.49	23.24	27.30	28.48
Eastbound					
Average: Six Forwarders 2/	26.28 4/	26.57	25.87	29.44	30.17
Lowest Forwarder	20.95	20.95	21.79	23.53	23.97
Airlines 5/	19.73	22.93	23.65	32.38	34.35
(Carriers)	(EA)	(AA)	(AA)	(AA)	(AA)
Westbound					
Average: Six Forwarders 2/	26.56 4/	28.02	28.60	32.38	33.44
Lowest Forwarder	20.50	22.68	23.97	26.81	28.74
Airlines 5/	19.73	22.93	23.65	32.38	34.35
(Carriers)	(EA)	(AA)	(AA)	(AA)	(AA)

COMPARISON OF PROPOSED TARIFF IN TOP 15 MARKETS WITH COMPETITIVE RATES

Direction & Carrier	NYC-BOS 186 Mi.	NYC-WAS 228 Mi.	CHI-DTT 235 Mi.	CHI-MSP 350 Mi.	NYC-CLE 424 Mi.
100 Pound Shipment					
Air Express (Both Directions)					
Suspended Tariff	$15.32	$15.32	$15.32	$18.38	$18.38
Interim Tariff	10.98	10.98	10.98	16.85	16.85
Proposed Cost Tariff 1/	22.23	22.23	22.23	24.56	24.56
Eastbound					
Average: Six Forwarders 2/	23.46	25.90 4/	23.42	24.56 4/	24.50
Lowest Forwarder	21.00	23.69	19.50	23.20	22.00
Airlines 5/ (Carrier)	20.65 (AA)	20.50 (AA)	17.85 (AA)	17.60 (NW)	20.25 (AA)
Westbound					
Average: Six Forwarders 2/	23.59	23.85	24.21 4/	23.42	24.39
Lowest Forwarder	21.00	19.50	21.45	19.50	22.00
Airlines 5/ (Carrier)	20,65 (AA)	20.50 (AA)	17.85 (AA)	17.60 (NW)	20.25 (AA)

COMPARISON OF PROPOSED TARIFF IN TOP
15 MARKETS WITH COMPETITIVE RATES

Direction & Carrier	DTT-NYC 508 Mi.	CHI-PHL 678 Mi.	CHI-NYC 740 Mi.	NYC-ATL 760 Mi.	MSP-NYC 1028 Mi.
100 Pound Shipment					
Air Express (Both Directions)					
Suspended Tariff	$19.40	$21.95	$21.95	$22.97	$27.06
Interim Tariff	$19.40	23.74	23.74	25.53	29.61
Proposed Cost Tariff 1/	25.72	28.04	28.04	29.21	31.54
Eastbound					
Average: Six Forwarders 2/	26.42 4/	27.26	27.71	27.51	33.25 4/
Lowest Forwarder	23.15	24.50	24.65	23.15	29.00
Airlines 5/ (Carriers)	19.75 (AA)	20.20 (UA)	22.60 (AA)	21.16 (EA)	25.96 (NW)
Westbound					
Average: Six Forwarders 2/	25.32	27.26	27.66	27.85	32.24
Lowest Forwarder	20.50	24.50	23.00	25.40	27.00
Airlines 5/ (Carrier)	19.75 (AA)	20.20 (UA)	22.60 (AA)	21.16 (EA)	25.96 (NW)

COMPARISON OF PROPOSED TARIFF IN TOP
15 MARKETS WITH COMPETITIVE RATES

Direction & Carriers	NYC-MIA 3/ 1093 Mi.	NYC-DAL 1384 Mi.	CHI-LAX 1746 Mi.	NYC-LAX 2474 Mi.	NYC-SFO 2587 Mi
100 Pound Shipments					
Air Express (Both Directions)					
Suspended Tariff	$28.58	$32.67	$35.74	$44.92	$47.48
Interim Tariff	31.65	36.09	39.26	47.17	49.28
Proposed Cost Tariff 1/	32.69	36.18	39.68	47.87	50.15
Eastbound					
Average: Six Forwarders 2/	35.26 4/	34.42	33.97	41.09	42.73
Lowest Forwarder	28.95	30.00	29.00	36.30	37.35
Airlines 5/	19.73	26.60	27.06	35.47	36.77
(Carriers)	(EA)	(AA)	(AA)	(AA)	(AA)
Westbound					
Average: Six Forwarders 2/	35.30 4/	37.95	39.75	47.46	49.62
Lowest Forwarder	29.00	34.25	33.00	39.00	40.00
Airlines 5/	26.39	30.64	31.53	41.41	43.01
(Carriers)	(EA)	(AA)	(AA)	(AA)	(AA)

AIR EXPRESS TAX SURCHARGES INCLUDED
PROPOSED COST TARIFF

		Amount of Surcharge to be Added to Equal Air Cargo Transportation Tax				
		5	10	25	50	100
Scale 2	Cnarge	$ 8.80	$ 9.25	$ 12.11	$ 14.21	$21.77
	Surcharge	.18	.19	.25	.30	.46
	Total	$ 8.98	$ 9.44	$ 12.36	$ 14.51	$ 22.23
Scale 4	Charge	$ 8.91	$ 9.48	$ 12.68	$ 15.35	$ 24.05
	Surcharge	.19	.20	.27	.32	.51
	Total	$ 9.10	$ 9.68	$ 12.95	$ 15.67	$ 24.56
Scale 5	Charge	$ 8.97	$ 9.59	$ 12.97	$ 15.92	$ 25.19
	Surcharge	.19	.20	.27	.33	.53
	Total	$ 9.16	$ 9.79	$ 13.24	$ 16.25	$ 25.72
Scale 7	Charge	$ 9.08	$ 9.82	$ 13.53	$ 17.06	$ 27.46
	Surcharge	.19	.21	.28	.36	.58
	Total	$ 9.27	$10.03	$ 13.81	$ 17.42	$ 28.04
Scale 8	Charge	$ 9.14	$ 9.94	$ 13.82	$ 17.63	$ 28.61
	Surcharge	.19	.21	.28	.37	.60
	Total	$ 9.33	$10.15	$ 14.10	$ 18.00	$ 29.21
Scale 10	Charge	$ 9.25	$10.16	$ 14.39	$ 18.77	$ 30.89
	Surcharge	.19	.21	.30	.39	.65
	Total	$ 9.44	$10.37	$ 14.69	$ 19.16	$ 31.54
Scale 11	Charge	$ 9.31	$10.28	$ 14.67	$ 19.34	$ 32.02
	Surcharge	.20	.22	.31	.41	.67
	Total	$ 9.51	$10.50	$ 14.98	$ 19.75	$ 32.69
Scale 14	Charge	$ 9.48	$10.62	$ 15.53	$ 21.05	$ 35.44
	Surcharge	.20	.22	.33	.44	.74
	Total	$ 9.68	$10.84	$ 15.86	$ 21.49	$ 36.18
Scale 17	Charge	$ 9.65	$10.96	$ 16.38	$ 22.76	$ 38.86
	Surcharge	.20	.23	.34	.48	.82
	Total	$ 9.85	$11.19	$ 16.72	$ 23.24	$ 39.68
Scale 24	Charge	$ 10.05	$11.76	$ 18.38	$ 26.74	$ 46.83
	Surcharge	.21	.25	.39	.56	.98
	Total	$ 10.26	$12.01	$ 18.77	$ 27.30	$ 47.81
Scale 26	Charge	$ 10.16	$11.99	$ 18.95	$ 27.89	$ 49.12
	Surcharge	.21	.25	.40	.59	1.03
	Total	$ 10.37	$12.24	$ 19.35	$ 28.48	$ 50.15

COMPARISON OF PROPOSED TARIFF IN TOP
15 MARKETS WITH COMPETITIVE RATES

1/ Air Express tariff based on combined REA division for the interim tariff and airline cost, including return and tax items (Appendix F) plus REA Air Express current tariff 2.1% as shown on page 16 of this Appendix.

2/ Air freight forwarder rates, including pick-up and delivery charges for six forwarders: Emery, Airborne, Wings and Wheels, Novo, WTC and Shulman.

3/ Eastbound: Miami to New York; westbound: New York to Miami.

4/ Average of less than six forwarders where one or more of the forwarders have no available rate.

5/ Airline air freight rates and charges include 5% transportation tax on airport-to-airport charges plus pickup and delivery charges.

Sources: G.T. Miano, Agent, Official Air Express Tariff, No. 1 C.A.B. No. 1

1. Suspended Rates: Section 5, Revisions Effective July 27, 1970.
2. Interim Rates: Section 5, Revisions Effective September 25, 1970.
3. Surcharges (added to all REA express charges in this exhibit): New Section 15, Effective July 1, 1970.

Emery Freight Corp., Air Freight Rate Tariff No. GC-2, C.A.B. No.38 Revised to May 16, 1971, and Air Freight PickUp and Delivery Tariff No.8, C.A.B. No. 53, Revised to June 6, 1971.

Airborne Freight Corp., Rate Tariff No. 5-A, C.A.B. No. 22, Revised to April 4, 1971.

Wings & Wheels Express, Inc., Air Freight Rate Tariff No. GC-8, C.A.B. No. 13, Revised to March 1, 1971 and Air Freight Pickup and Delivery Tariff No. 2, C.A.B. 11, Revised to April 11, 1971.

Novo Air Freight Corp., Air Freight Tariff No. 2, C.A.B. No. 42, Revised to April 11, 1971 and Pickup and Delivery Tariff No. 1, C.A.B., No. 43, Revised to June 6, 1971.

WTC Air Freight, Domestic General Commodity Rate Tariff, C.A.B. No. 7, rates effective February 5, 1971 and revised pages effective April 23, 1971.

Shulman Air Freight, General Commodity Tariff, No. 4-A, C.A.B. No. 8, Revised to March 4, 1971.

Airline Tariff Publishers, Agent, Official Air Freight Rate Tariff No. 2, C.A.B. No. 8, Rates Revised to April 15, 1971, and Official Air Freight Pick Up And Delivery Tariff, No. 3C, C.A.B. No. 19, revised to June 1, 1971.

APPENDIX TO BRIEF OF BUREAU OF ECONOMICS TO ADMINISTRATIVE LAW JUDGE SHAPIRO

Summary of Total Cost
Of Providing Domestic Air Express
Service for REA Express And The Direct Carriers
For The Year Ended December 31, 1969
(In $000)

	REA Express	Direct Carriers	Total
Total Expense	$53,819 [1]	$49,275 [2]	$103,094
Adjustments:			
(1) Substitute Service Expense [3]	-	1,412	1,412
(2) Revenues from Value Charges, C.O.D. Fees, and Other Accessorial Charges [4]	(2,481)	-	(2,481)
Adjusted Expense	51,338	50,687	102,025
Return and Taxes	929 [5]	9,776 [6]	10,705
Total Cost	$52,267	$60,463	$112,730

1/ See Appendix B-1.
2/ See Appendices C-1 and C-2.
3/ REA-IR-103 (also, Agreement C.A.B. No. 17935, as amended, Article II, Section B, September 25, 1970).
4/ 9,543,300 domestic shipments (REA-IR-1) x 26¢ (PC-113).
5/ See Appendix B-4.
6/ See Appendices C-1 and C-2.

EXCERPTS FROM BRIEF OF PARTICIPATING
AIRLINES TO ADMINISTRATIVE LAW JUDGE KEITH

* * *

airlines' air freight service, but that service cannot be regarded as a small shipment service in view of the minimum charges for airport-to-airport service ranging from $10.00 to $26.00, depending upon distance, and additional charges of several dollars for pickup and delivery services.

The air freight forwarders, on the other hand, do compete with air express for the small shipment traffic in the markets they serve, but their service is far less extensive than the nation-wide air express service between all airline points. Only air express service is provided to all airport cities regardless of size, volume of traffic, or profitability.

There are a total of 524 airport cities in the United States, but the forwarders maintain their own terminals and employees at only a relatively few. Emery has the most with 88 terminals. Some of the other major forwarders have 15 or less. However, in addition to maintaining their own facilities, the forwarders do have agency representation at a substantial number of additional points, but such agency representation usually involves only pickup and delivery service, and frequently only a destination delivery service (Tr. 2469, 2262, 2295, AFFA-IR-1B). The following table derived from the information responses of the forwarders shows the extent of their terminal and agency coverage by number of airport cities:

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Forwarder	Terminals	Agents	Total	Source
Airborne	56	140	196	AFFA-IR-1A
Air Land	15	106	121	AFFA-IR-1B
Domestic	27	236	363	DAX-IR-1
Emery	65	99	164	EAF-1
NOVO	14	69	83	AFFA-IR-1C
Profit-by-Air	9	221	230	AFFA-IR-1D
Shulman	23	111	134	AFFA-IR-1E
W.T.C.	17	63	80	AFFA-IR-1F
Santa Fe	12	136	158	AFFA-IR-1G
Wings & Wheels	32	76	108	WW-IR-II

Thus, of all the major forwarders, only one has representation at more than one-half of the airport cities. All the others are represented at less than half such cities. Furthermore, an examination of the sources cited in the table discloses that the forwarders are usually represented in the same cities - the major airport cities and some of the secondary airport cities. Forwarder representation at 200 or more smaller airport cities is totally absent.

Air express service, with its nation-wide coverage of all airport cities regardless of size or volume of traffic, affords shippers and receives at many smaller airport cities with their only small shipment air service. Nearly 40% of all air express shipment handlings occur at cities other than where the 25 exclusive air express field offices are maintained (PA-134).

According to a recent origin and destination survey made by REA, approximately 64% of all air express shipments is generated in the smaller markets - those below the top 500 city pairs. (REA-R-1201). These many smaller

* * *

forwarder or airline air freight traffic, except for that very small volume of forwarder "high expedite" traffic, estimated to be only 1/10th of 1% of the forwarders' total volume of traffic (Tr. 2402-3), which presumably could be handled in the airlines' on-line package service.

The cost to the public for shipments that would otherwise have moved in air express service would be substantially increased, whether such shipments would be handled in the air freight forwarders' or the airlines' air freight service, or as "high expedite" traffic in the airlines' "package service".

The 4,267,000 minimum charge air express shipments (constituting 52% of all air express shipments), which now move via air express at a minimum charge of $9.68 ($9.50 tariff + 18¢ tax) would cost the shipper an average of $16.23, or 68% more, moving in air freight forwarder service at present rates.[11/] This would

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11/ REA-IR-1, pp. 30,41 and 49 shows that in the fourth quarter of 1970 the minimum charge shipments weighed an average of 9.1 pounds. The median distance scale 5 had as its largest market New York and Detroit (REA-IR-15, p.11). AFFA-706 compares rates for ten pound shipments in that 503 mile market:

	AFFA-706	% Higher than $9.68
Air Express Interim Tariff	$8.68 includes tax	-
With surcharge	$9.68 CAB Order 71-11.93	-
Forwarders:		
Emery	16.40	69%
Airborne	16.10	66%
Wings & Wheels	15.75	63%
Novo	16.65	72%
WTC	-	-
Airline (AAL)	19.25	99%
Average of four forwarders shown	16.23	68%

$16.23 - $9.68 = 6.55 x 4,264,000 = $27,929.000.

EXCERPTS FROM BRIEF OF AFFA
TO ADMINISTRATIVE LAW JUDGE
KEITH

* * *

B. A High Expedite Nationwide Air Freight Service Featuring Priority Boarding on Specific Flights on an Airport-To-Airport Basis Would Better Serve the Public Interest.

While the record makes abundantly clear that the vast bulk of present "air express" traffic neither needs nor receives better than a next day service, there is evidence in the record indicating that for a tiny fractional balance of the traffic, highly expedited service as contemplated by AFFA is needed.

To serve this limited class of traffic (estimated at one tenth of one percent of total cargo shipments (Tr. 2402), or only 25,000 indirect air carrier shipments a year (AFFA-405) plus a limited number of direct air carrier shipments), AFFA has proposed a new type of "high expedite" air freight service. (We agree with the Bureau that a separate class of cargo service labeled "air express" is not needed either from the standpoint of public interest or as a matter of law under the statute.)

The essential features of this service would be elimination of the present agreement with REA as the chosen ground agent, and secondly the elimination of present agreement among the airlines insofar as it contemplates a single chosen instrument, rate fixing and traffic pooling as among the airlines. The airlines would instead charge rates set forth in their individual tariffs.[13]

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[13] We would expect the carriers to provide either unilaterally or by agreement for through rates and single documentation nationwide, however, and would reserve judgment on any such agreement as might be presented under Section 412 of the Act in this regard. To this extent, we would disagree with the Bureau's position that Agreement C.A.B. No. 12866 should be disapproved in its entirety.

Such rates would be airport-to-airport and would be open to all--forwarders, shippers and REA alike. In order to reduce airline costs, the tariffs should contain detailed rules specifying the forms in which and the places where the limited amount of traffic envisioned is to be submitted, the required documentation and any other reasonable matters of the carriers' choosing.

The forwarders, in turn, would be free to charge whatever rates competition determines in their own tariffs to cover the airlines charges and their own expenses. This would provide for the first time competitive equality in the small package high expedite field.

1. AFFA's Proposal Would Broaden and Improve Existing Service.

As noted earlier, the forwarders are fit, willing and able to provide a comprehensive service for high expedite traffic outside of normal consolidation channels because they are, in fact, providing it now.

AFFA's proposal, by eliminating the shackles imposed by the present "air express" monopoly, would allow the forwarders to expand this service.

Thus, the forwarders represented by AFFA have indicated that they would expand their service, both geographically and in terms of commodity coverage, to meet the needs of this type of traffic, provided the present discriminatory advantage afforded REA were eliminated. Thus, at least two forwarders, Airborne and

WTC, would change their present destination agents to originating stations as well. (Tr. 2261-62 and 2295) To illustrate, this would expand Airborne's system immediately from 56 to 197 originating stations. (AFFA-IR-I-A) Moreover, the AFFA represented forwarders have pledged to open new stations and otherwise to expand their facilities faster (Tr. 2296-97 and 2318-19) and to accellerate the process by which they would plant "seed" money for new facilities which may not be profitable at the outset, but which could be profitable in the future (Tr. 2283, 2343 and 2558). These expanded facilities would benefit not only high expedite traffic, but all other traffic, as well. The AFFA represented forwarders have also pledged to eliminate any restrictions they might now have on commodities moving in the present "air express" service. (AFFA-RT-2, p. 1)

2. The AFFA Proposal Would Assure the Lowest Cost Service For The Public

While comparative ground costs as between the forwarders and REA are not directly at issue in this case, data in the record indicates that the forwarders are more efficient, and hence could be expected to offer the public the required service at lowest possible cost. AFFA-302 shows that REA's ground costs are far out of line with air freight forwarder experience, notwithstanding the fact that the forwarder service is essentially the same as or better than REA;s in terms of elapsed time (Table I) and definitely superior overall (Section III-A01, supra).

What little evidence appears in the record to refute the fact of superior forwarder efficiency fails to prove the point. Thus, PA-R-113, p. 1 is flawed first by failing to account for the fact that air freight forwarders provide a much higher degree of costly pickup and delivery services for their traffic than does REA (p. 9 and Table I, supra.) and second, in seeking to adjust for the fact that the forwarders' traffic is heavier (and hence more costly) than REA's, by erroneously using cost data which does not reflect the substantially higher costs for REA as size of shipment increases. Suffice it to say at this juncture that REA's ground costs for larger shipments is a highly controversial subject which goes to the heart of the question of structure of the air express tariff now at issue in Docket 22387. Thus, instead of the airlines' estimate of $12.19 as REA's cost for Airborne's average 155 pound shipment, we estimate REA's cost for this shipment at slightly more than $22.00, which is the midpoint between our estimate of REA's cost for a 100 pound and a 200 pound shipment. (AFFA Brief to Examiner Shapiro, dated July 2, 1971, Docket 22387, Appendix B). This is more than $5 per shipment greater than the cost for Airborne, as indicated in PA-R-113.

Competition lies at the heart of AFFA's high expedite proposal. Competition can be expected to produce the lowest possible rates for the best service. We do not know where the high expedite rate level would lie precisely. We believe it would be

somewhere between the two extremes of today's rediculously low air express rates and the very high current airline charges for small shipment traffic. (These services are known by various trade names, such as Braniff's "PRONTO" service, Delta's "DASH" etc.) The point is that the public is prepared to pay the cost whatever it is (p. 10, supra.), and the forwarders will insure the lowest possible cost.

3. AFFA's Proposal Would Benefit The Airlines Substantially.

The net financial impact of AFFA's proposal on the airlines must be analyzed in terms of a shift of present "air express" traffic into two categories; high expedite and regular air freight

First, the airlines would benefit from any shift of present "air express" to AFFA's high expedite service because AFFA contemplates fully compensatory rates. The current huge "air express" losses will be eliminated to this extent.[14]

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[14] Because the volume of this type of traffic will be small (Tr. 2447 and 2457), the initial objections of the airlines expressed at the hearing to the air forwarder concept are totally unfounded. Thus, AFFA's proposal will cause no airport congestion, Nor will complicated receiving procedures or operational problems arise from the receipt of large volumes of premium rated traffic. To the extent large volumes of premium rated compensatory traffic were to develop on occasion, we suspect the airlines would rather like it. In any event, if traffic were to occasionally exceed capacity, the airlines could handle the operational problem of assigning space in the same manner that they do now, by allocating the space on a first come, first served basis. (Tr. 397, 2443) Displaced forwarders or shippers at the end of the line could then seek other alternatives, as they do now. (Tr. 2448-49) If necessary, the postal regulations, which permit airlines to displace priority

As to the remainder of present "air express" traffic-the 99.9% that would shift to regular air freight service--the impact would be even more dramatically favorable. Under AFFA's proposal, the expensive runner operation could be completely eliminated for this large volume of traffic. (AFFA-IR-16, p. 5; Tr. 388) At the same time, much of the present traffic, over eight million shipments, could be tendered in consolidations or containers. (AFFA-RT-2, p. 5; AFFA-R-T-1, pp. 22-23; AFFA-R-22) This could eliminate much of the costly hand loading and unloading and cut airline expenses in half by eliminating virtually all airline ground expenses, leaving only capacity expenses. (PA-403) Again, any increased billing expenses would be more than offset by savings in traffic servicing expenses.

It is not anticipated that AFFA's proposal would result in any significant diversion from combination service. The carriers have recently instituted special daytime freight rates for combination service which the evidence indicates have met with marked success. (Tr. 2508) The introduction of wide bodied

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mail with lesser priority traffic of an emergency nature, could be modified. However, there is no evidence that the current limits are not adequate, and it is therefore probable that the present regulations would remain fully adequate in the future to cover the situations posed. Moreover, the forwarders under AFFA's proposal would tender traffic directly to the airline of their choice, thereby avoiding the need to distribute the traffic of every forwarder to every airline. This would further simplify the process and reduce traffic servicing expense. It was also suggested that airline billing costs might rise. To the extent some additional general and administrative expenses, such as billing costs, would be added, however, they would be more than offset under the forwarder proposal by elimination of traffic servicing expenses, principally, the airline runner operation which by all accounts is the most costly ground function performed by the airlines in present "air express" service. (Tr. 2640-41).

aircraft has reduced some of the disadvantages of combination service (inadequate capacity, low priority behind other traffic, split shipments, inability to unitize or containerize, etc.). And the forwarders, in conjunction with the airlines, are working to increase container traffic in combination service even on standard size jet aircraft through the use of E or other types of small containers. (AFFA-RT-2, p. 5; Tr. 2485)

In view of the foregoing, the airlines should welcome the AFFA proposal.

C. In The Event, But Only In the Event the Present Air Express Arrangement is Terminated and AFFA's Alternative Proposal is Adopted, AFFA Would Have No Objection to REA's Authorization as a Domestic Air Freight Forwarder Pursuant to the Board's Long Haul Motor Carrier Regulations for a Three Year Experimental Period.

If the discrimination in favor of REA under the present "air express" arrangement is eliminated by abolishing that service, and REA and the air forwarders are authorized to provide a substitute "high expedite" air freight service on equal competitive terms as outlined by AFFA, then AFFA would not object to REA's authorization as a domestic airfreight forwarder on equal competitive terms for a limited experimental period under part 296 of the Boards Economic regulations, including Subpart I thereof.

It is not seriously disputed by any party that REA comes within the terms of the Board's Long Haul Motor Carrier Regulations. (§ 296.1 (d)) REA holds operating rights issued by the Interstate Commerce Commission to haul general commodities. Railway

Appendix B

FURTHER DISCUSSION OF POINTS RELATING TO AFFA'S SERVICE PROPOSAL

The so-called "forwarder pool."

The suggestion was made in the course of the hearing that only a so called air freight forwarder pool could provide an alternative to the present service. However, that proposal was premised on a need for traffic to be tendered at a single point on the airport because of there being a huge volume of traffic moving in the system. However, that factual premise is refuted by the record (p. 10, supra). AFFA would oppose the forwarder pool concept in any event because it would eliminate a key element from the AFFA proposal--the placing of the power to select flights in the shipper's hands. It would also dilute the shipper's control over his traffic by interposing a useless entity between himself and the carrier. Finally it would require a continuation of the airline runner operation to and from all flights, thereby substantially increasing airline costs.

Adequacy of Existing Small Package Service of the Airlines

A question was raised whether the present airline small package service was adequate for the needs of the system as envisioned by AFFA. The answer is no. The present service has not been formulated as a substitute for air express. It would have to be extended nation wide under a joint rate system featuring standard uniform documentation. (Tr. 2639) A reservation system

may have to be added. (Tr. 2461) And the charges would have to be reassessed in light of the forwarders' proposal and the contributions which the forwarders could make to the system. (Tr. 2639)

Availability of Service Proposed by AFFA to Non Forwarder Shippers For Shipments Requiring Interline Transfers

A contention was also made that the public could not utilize the AFFA system because, unlike the forwarders, they would have no representative at interline points to effect transfers. (Tr. 2464) However, we presume the airlines would continue to serve the public as at the many points where REA presently maintains no office (Tr. 652), and that the airlines' high expedite service would be competitive with that of the forwarders and would meet the public need, particularly when one considers that the rates will for the first time be compensatory.

Acceptability of a Door to Door "Air Express" Service Provided By the Airlines Alone Without Any Chosen Ground Agent

A related issue was whether the forwarders would object to a door to door air express service being offered exclusively by the airlines without any chosen instrument. (Tr. 2515) If by that is meant that the airlines without REA or any other separate chosen ground agent would offer exclusive door-to-door service, the AFFA represented forwarders would strenuously object

on the same ground that they presently object to having to pay for a pickup and delivery service of REA which is not utilized, and which comprises most of the current air express charge. If, on the other hand, what is meant is a door-to-door high expedite air freight tariff along the lines suggested by AFFA in addition to a similar airport-to-airport tariff, we would not object, just as we do not object to the airlines and forwarders competing in regular door-to-door air freight service today, provided adequate airport-to-airport rates are maintained. (Tr. 2517, 2636)

Acceptability of Continuing the Present "Air Express" Concept, but with a New Airport to Airport Rate.

Another alternative posed to the present system was maintaining the present "air express" service, but instituting another level of rates which would be airport-to airport. (Tr. 539-40) These rates, after eliminating the pickup and delivery element from the current air express charges, could be only slightly above the present airline division now received for air express shipments (Tr. 540-41), since the pickup and delivery element comprises the largest single element of REA's air express ground costs (over one third, according to REA's own exhibits in Docket 22387: REA-D-413, Summary Sheet and Sheets 1a and 2a, all revised. See also Tr. 849 for a reference to the dominant role played by these costs in REA's total cost picture) and REA's role in handling the over the counter traffic of forwarders is otherwise minimal. While creation of airport to airport rates under the current

system would offer some improvements to the present system by opening up the small package field to somewhat more competition through the elimination of some of the discriminatory airline charges and practices as between REA and the forwarder (Tr. 2517), it would be less desirable than the AFFA proposal, primarily because running forwarder traffic through REA's terminals and the present "air express" system, even on a counter-to-counter basis, has many disadvantages, such as the 59 minute rule, the present runner operation, additional unnecessary handling steps, and most importantly, loss of control on the part of the shipper. (Tr. 2642) The price fixing and other anti-competitive elements would likewise generally remain. Therefore, the air freight forwarders oppose the mere creation of airport-to-airport rates under the present system. (Ibid.)

Before The
CIVIL AERONAUTICS BOARD
Washington, D. C.

Investigation of Air Express Rates	)	Docket 22387

MOTION TO INCLUDE UNITED AIRLINES INFORMATION RESPONSE IN DOCKET 23080 IN THE RECORD IN THIS PROCEEDING

REA Express, Inc. moves that Exhibit U-IR-22, pages 1 through 3, an information response filed by United Airlines in Docket 23080, the Priority and Nonpriority Domestic Service Mail Rates Investigation, be included in the record in this proceeding. A copy of the exhibit is attached.

Page 1 of U-IR-22 entitled, "United Studies Completed in 1970 Relative to Manpower Assigned Various Traffics," shows man minutes per thousand pounds for ground functions performed for baggage, air freight, mail and express in freighter as well as combination aircraft. This exhibit contains evidence on one of the fundamental issues in Docket 22387: the manpower required for the performance of airline ground functions in the handling of each category of cargo. The exhibit is extremely important evidence, particularly because it corroborates the evidence on the subject submitted by REA witnesses in Docket 22387, and is in substantial conflict with the testimony, evidence and position

adopted in that case by the airlines. In addition, the evidence contained in U-IR-22 is unique in that it contains the only publicly available data prepared by an air carrier showing relative man hour assignments to the different categories of cargo traffic.

As an information response submitted by United Airlines, one of the airline parties to Docket 22387, the exhibit is admissible in evidence in this proceeding. For the same reason, no prejudice to any party can result from inclusion in this record of the United exhibit and consideration of it by the Examiner in his decision in this case. If the Examiner deems it appropriate to reopen the hearing for the limited purpose of considering U-IR-22, REA will participate in such a reopening.

For the reasons stated above, REA Express respectfully requests that the Examiner include in the record of this proceeding Exhibit U-IR-22 filed in Docket 23080 by United Airlines and consider it in reaching a decision.

Respectfully submitted,

John J. C. Martin
Assistant General Counsel and
Director of Economic Regulation
REA Express, Inc.
219 East 42nd Street
New York, New York 10017

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing Motion on behalf of REA Express by mail upon all parties of record to this proceeding.

Elroy H. Wolff

September 30, 1971

United Air Lines

UNITED STUDIES COMPLETED IN 1970
RELATIVE TO MANPOWER ASSIGNED VARIOUS TRAFFICS

(Response to Appendix C, Part II, M-2)

Line No.	(1)	(2)	(3)	(4)
		Man-Minutes per 1,000 Pounds		
			Combination Aircraft	
		Freighter	Container Loaded	Hand Loaded
	Baggage			
1	Load		34.3	26.5
2	Unload		34.3	26.5
3	Baggage Room		60.0	30.0
4	Baggage Claim		15.0	8.0
5	Run		25.0	25.0
6	Total		168.6	116.0
7	Minutes/1,000#		48.	66.
	Air Freight			
8	Load	210.0	11.6	16.2
9	Unload	210.0	11.6	16.2
10	Air Freight Dock	545.0	21.8	21.8
11	Buildup	340.0	18.0	18.0
12	Teardown	232.0	14.0	14.0
13	Run	0	30.0	30.0
14	Total	1,537.0	107.0	116.2
15	Minutes/1,000#	60.	107.	116.
	Mail			
16	Load	11.6	11.6	16.2
17	Unload	11.6	11.6	16.2
18	Run	20.0	30.0	30.0
19	Coverage	33.0	33.0	33.0
20	Total	76.2	86.2	95.4
21	Minutes/1,000#	76.	85.	95.
	Express			
22	Load	11.6	11.6	16.2
23	Unload	11.6	11.6	16.2
24	Run	20.0	30.0	30.0
25	Coverage	7.5	7.5	7.5
26	Total	50.7	60.7	69.9
27	Minutes/1,000#	51.	61.	70.

SOURCE: United Air Lines Company Records.

UNITED STUDIES COMPLETED IN 1970 RELATIVE TO MANPOWER ASSIGNED VARIOUS TRAFFICS

(Response to Appendix C, Part II, M-2)

RSM - GROUND HANDLING COST ANALYSIS - 1970

Line No.	(1) Equipment	(2) DC-8F	(3) B-727F	(4) B-727-200	(5) B-720	(6) HNL DC-8-61	(7) Dom. DC-8-61	(8) HNL DC-8	(9) Dom. DC-8	(10) HNL DC-8-62	(11) Dom. DC-8-62	(12) B-737	(13) B-727	(14) HNL B-747	(15) Dom. B-747	(16) Est. DC-10
1	Volume	27,000	19,000	3,500	4,100	5,900	4,800	5,900	4,000	4,900	4,400	2,200	2,700	9,200	5,700	7,700
2	Cargo	27,000	19,000	1,600	2,050	1,400	2,200	1,700	1,900	1,300	2,300	1,000	1,100	3,200	2,700	3,000
3	# of Bags			81	89	190	111	179	90	154	90	51	66	255	129	200
	Minutes of Work Origin															
4	Load Cargo	210	180	42	66	74	64	64	46	75	60	35	47	90	90	90
5	Bag Room	-	-	32	36	76	44	72	36	62	36	20	26	102	52	80
6	Cargo & Bag Run	10	10	55	55	55	55	55	55	55	55	55	55	62	62	60
7	AF Dock	68	48	4	5	4	6	4	5	3	6	3	3	8	7	7
8	AF Build-Up	367	258	29	38	26	40	31	35	24	42	18	20	58	49	55
	Destination															
9	Unload Cargo	210	180	42	66	74	64	64	46	75	60	35	47	90	90	90
10	Bag Claim	-	-	8	9	19	11	18	9	15	9	5	7	26	13	20
11	Cargo & Bag Room	10	10	45	45	45	45	45	45	45	45	45	45	90	90	60
12	AF Dock	68	48	4	5	4	6	4	5	3	6	3	3	8	7	7
13	AF Teardown	251	177	22	29	20	31	24	27	18	32	14	16	45	38	42
14	Total Minutes	1,194	911	283	354	397	366	381	309	375	351	233	269	579	498	511
15	Minutes/Lb.	.0442	.0479	.0809	.0863	.0673	.0763	.0646	.0773	.0765	.0798	.1059	.0996	.0629	.0874	.0664
16	Hours/Ton	1.47	1.60	2.69	2.87	2.24	2.54	2.15	2.57	2.55	2.66	3.53	3.32	2.09	2.91	2.21
17	Utilization Factor	2.94	3.20	5.38	5.74	4.48	5.08	4.30	5.14	5.10	5.32	7.06	6.64	4.18	5.82	4.42
18	Weighting Factor	1.00	1.09	1.83	1.95	1.52	1.73	1.46	1.75	1.73	1.81	2.40	2.26	1.42	1.98	1.50

United Air Lines

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DOCKET 23080
EXHIBIT U-IR-22
PAGE 2 OF 3

United Air Lines

UNITED STUDIES COMPLETED IN 1970 RELATIVE TO MANPOWER ASSIGNED VARIOUS TRAFFICS

(Response to Appendix C, Part II, M-2)

Cargo and Baggage Weighting Factors

	(1)	(2)	(3)
Line No.	Equipment	Man-Hours Per Ton	Weighting Factors
1	DC-8F	2.94	1.00
2	B-727F	3.20	1.09
3	DC-8-61 (HWN)	4.48	1.52
4	DC-8-61 (Domestic)	5.08	1.73
5	B-727-200	5.38	1.83
6	DC-8 (HWN)	4.30	1.46
7	DC-8 (Domestic)	5.14	1.75
8	B-720	5.74	1.95
9	B-737	7.06	2.40
10	B-727	6.64	2.26
11	DC-8-62 (HWN)	5.10	1.73
12	DC-8-62 (Domestic)	5.32	1.81
13	B-747 (Domestic)	5.82	1.98
14	B-747 (HWN)	4.18	1.42
15	CV-580	-	-
16	DC-10 (Estimate)	4.42	1.50

331(a)
NOTICE DATED OCTOBER 13, 1971

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

INVESTIGATION OF AIR EXPRESS RATES

DOCKET 22387

NOTICE TO ALL PARTIES:

On September 30, 1971 REA Express, Inc. (REA) filed a motion to include in the record of this proceeding an information response (U-IR-22) submitted by United Airlines, Inc. in Docket 23080, the Priority and Nonpriority Domestic Service Mail Rates Investigation. REA contends that the exhibit is "extremely important evidence" because, in the instant case, it supports its own evidence and is in substantial conflict with the evidence and position of the airlines.

The participating carriers and the Air Freight Forwarders Association (AFFA) have filed answers opposing REA's motion. The Bureau of Economics (Bureau) has also filed an answer which does not oppose inclusion of U-IR-22 in this record provided it is received and considered without prejudice to the Bureau's position herein, and only for the purpose of impeaching the evidence of the participating carriers as to labor costs assignable to the various cargo traffics. The Bureau also requests that if U-IR-22 is not received for the above limited purpose, REA's motion should be denied, and that if the motion is granted without the above limitations, a hearing be held on the subject matter of U-IR-22.

In view of the opposition of the participating carriers and AFFA to REA's motion, U-IR-22 cannot be accepted for the record (Rule 24(j) of the Board's Rules of Practice). Nor does the alternative of reopening the hearing suggested by REA for the limited purpose of considering U-IR-22 appear to be warranted. Besides being cumulative of other evidence in the record by United on the issue of express handling costs, U-IR-22 covers only United's experience as compared with that of all the other direct air carrier parties on the subject. There is no representation or indication that the new evidence is representative of the other carriers' experience. The offered exhibit relates to a highly controversial issue which has already been extensively explored on the record,

and, therefore, may be expected, at a further hearing at this late stage, to engender extensive proceedings dealing with essentially cumulative matters.

Upon consideration of the foregoing, REA's motion and the answers thereto of the other parties, the motion of REA to include the said exhibit U-IR-22 in the record of this case is hereby denied.

Milton H. Shapiro
Hearing Examiner

October 13, 1971